

**Citicorp Industrial Credit, Inc.**

9453-H  
A Citibank Affiliate  
399 Park Avenue  
New York, N.Y.  
10043  
RECORDATION NO. 10902  
Filed 1425  
OCT 18 1979-1 50 PM

INTERSTATE COMMERCE COMMISSION

1013K H  
RECORDATION NO. 10902  
Filed 1425  
OCT 18 1979-1 50 PM

INTERSTATE COMMERCE COMMISSION  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Citicorp Industrial Credit, Inc.  
Refinancing of Railcar Acquisition

Dear Sir:

Enclosed for recordation with the Interstate Commerce Commission pursuant to Section 11303 of Title 49 of the United States Code ("Section 11303") are one original and two counterparts of each of the following documents:

1. Mortgage dated as of October 1, 1979 (the "Mortgage") between Citicorp Industrial Credit, Inc., as Lender (the "Lender"), and C&H Railways, Ltd., as Borrower (the "Borrower"), which evidences, among other things, the mortgage and assignment as security by the Borrower to the Lender of the Borrower's right, title and interest in, to and under (a) certain railroad equipment (the "Equipment") described in Annex 1 to the Mortgage and all proceeds thereof; (b) a Lease Agreement made as of September 23, 1977 between Rex Railways, Inc., as Lessor, and the Lenawee County Railroad Company, Inc., as Lessee, which was recorded pursuant to Section 11303 on June 22, 1978 at 9:20 A.M. under Recordation No. 9453, as amended by an Equipment Schedule which was recorded pursuant to Section 11303 on February 26, 1979 at 11:20 A.M. under Recordation No. 9453-A, a First Amendment to Equipment Schedule which was recorded pursuant to Section 11303 on March 15, 1979 at 11:40 A.M. under Recordation No. 9453-B, a Second Amendment to Equipment Schedule which was recorded pursuant to Section 11303 on March 15, 1979 at 11:40 A.M. under Recordation No. 9453-G and which identifies the Borrower as the principal for whom Rex Railways, Inc. acts and who owns the Equipment (as so amended, the "Lease"), and all payments to become due thereunder; and (c) a Management Agreement dated as of February 15, 1979 (the "Management Agreement") between Rex Railways, Inc. and Skiva International, Inc. which was recorded pursuant to Section 11303 on March 15, 1979 at 11:40 A.M. under Recordation No. 9453-D, and all payments to become due thereunder. The

Counterparts — Mrs. Dolores M. Rodriguez

RECORDATION NO. 10902  
Filed 1425

OCT 18 1979-1 50 PM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 10902  
Filed 1425

OCT 18 1979-1 50 PM

INTERSTATE COMMERCE COMMISSION

9-231A091  
No. 10902  
Date OCT 18 1979  
Fee \$ 260.00  
ICC Washington, D. C.

RECORDATION NO. 10902  
Filed 1425

OCT 18 1979-1 50 PM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 10902  
Filed 1425

OCT 18 1979-1 50 PM

INTERSTATE COMMERCE COMMISSION



A Citibank Affiliate

399 Park Avenue  
New York, N.Y.  
10043

right, title and interest of the Borrower which is mortgaged and assigned as security pursuant to the Mortgage was acquired from Skiva International, Inc. pursuant to an Assignment dated March 15, 1979 (the "Assignment") which was recorded pursuant to Section 11303 on March 15, 1979 at 11:40 A.M. under Recordation Nos. 9453-F and 10131-F.

2. Guaranty and Agreement dated as of October 1, 1979 among Citicorp Industrial Credit, Inc., Rex Railways, Inc. and Rex-Noreco, Inc. which evidences, among other things, the guarantee by Rex Railways, Inc. and Rex-Noreco, Inc., severally and jointly, of certain of the obligations of the Borrower under the Mortgage and the mortgage and assignment as security by Rex Railways, Inc. to the Lender of its right, title and interest in, to and under the Lease and all payments to become due thereunder.

3. Consent and Agreement dated as of October 1, 1979 between the Lenawee County Railroad Company, Inc. and Citicorp Industrial Credit, Inc., which evidences, among other things, the consent of the Lenawee County Railroad Company to the mortgage and assignment as security made by the Borrower to the Lender pursuant to the Mortgage.

4. Consent and Agreement dated as of October 1, 1979 between Skiva International, Inc. and Citicorp Industrial Credit, Inc., which evidences, among other things, the consent of Skiva International, Inc. to the mortgage and assignment as security made by the Borrower to the Lender pursuant to the Mortgage; the right, title and interest subject to such mortgage and assignment having been assigned to the Borrower by Skiva International, Inc. pursuant to the Assignment.

5. Release and Agreement dated as of October 1, 1979 between Twitter, Inc. and Citicorp Industrial Credit, Inc., which evidences, among other things, the release by Twitter, Inc. to the Borrower of all of its right, title and interest in, to and under a Conditional Sale Agreement dated as of February 13, 1979 among Twitter, Inc., as Vendor, Rex Railways, Inc., as Manager, and Skiva International, Inc., as Vendee, which was recorded pursuant to Section 11303 on February 22, 1979 at 4:40 P.M. under Recordation No. 10131, as amended by Amendment Agreement #1 dated as of February 13, 1979 which was recorded pursuant to Section 11303 on March 15, 1979 at 11:40 A.M. under Recordation No. 10131-B, including all of its right, title and interest in and to the Equipment.

6. Amendment dated as of October 1, 1979 between Rex Railways, Inc. and C&H Railways, Ltd., which amends the

A Citibank Affiliate

399 Park Avenue  
New York, N.Y.  
10043 Management Agreement; the rights and obligations of C&H Railways, Ltd. under the Management Agreement having been acquired from Skiva International, Inc. pursuant to the Assignment.

The addresses of the parties to the enclosed documents are as follows:

1. Citicorp Industrial Credit, Inc., 399 Park Avenue, New York, New York 10043.

2. C&H Railways, Ltd., 1250 Broadway, New York, New York 10018.

3. Rex Railways, Inc., 616 Palisade Avenue, Englewood Cliffs, New Jersey 07632.

4. Rex-Noreco, Inc., 616 Palisade Avenue, Englewood Cliffs, New Jersey 07632.

5. Twitter, Inc., c/o Rex Railways, Inc., 616 Palisade Avenue, Englewood Cliffs, New Jersey 07632.

6. Lenawee County Railroad Company, Inc., 708 East Michigan Street, Adrian, Michigan 49221.

7. Skiva International, Inc., 1250 Broadway, New York, New York 10018.

The Equipment covered by the enclosed documents consists of 100 70-ton, 50'6" general purpose box cars, manufactured by Pullman Standard Division of Pullman Incorporated, having the mechanical designation of the American Association of Railroads "XM", bearing the road numbers of the Lenawee County Railroad Company, Inc. LCRC 2001 through 2100, inclusive, and bearing the legend "Ownership Interest Subject to a Security Agreement Filed under the Interstate Commerce Act."

Also enclosed is a check in the amount of \$260 for payment to the Interstate Commerce Commission of the required filing fees of \$10 for the Amendment to the Management Agreement and \$50 for each of the other five documents which are enclosed.

Please accept the enclosed documents for recordation and make the appropriate entries to the Index of Documents in order to reflect the assignments, transfers, releases and amendments which are effected by such documents and described above. Please return the original of each of the enclosed documents, stamped with a recordation number, together with the usual letter of the Commission confirming recordation, to the delivering messenger of our counsel,



A Citibank Affiliate

399 Park Avenue  
New York, N.Y.  
10043 New York 10005, for transmittal to the undersigned.

Very truly yours,

CITICORP INDUSTRIAL CREDIT,  
INC.

By W. H. Bergen  
Title Vice President

*Marguerite Kahn*  
*(212) 422-6767*

**Citicorp Industrial Credit, Inc.**

*Dolores Rodriguez*  
*298-5970*

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

10/18/79

OFFICE OF THE SECRETARY

Messrs Mudge Rose Guthrie &  
Alexander  
20 Broad Street  
New York, N.Y. 10005

Dear  
Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C.

11303, on 10/18/79 at 1:50pm, and assigned re-  
recording number(s).

10131-G, 9453-H, 10902, 10902-A, 10902-B 10902-C

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

10902  
RECORDATION NO. .... Filed 1425  
OCT 18 1979 - 1 50 PM  
INTERSTATE COMMERCE COMMISSION

---

**MORTGAGE**

Dated as of October 1, 1979

among

**CITICORP INDUSTRIAL CREDIT, INC.,**  
as Lender

and

**C&H RAILWAYS, LTD.,**  
as Borrower

---

(COVERING 100 GENERAL PURPOSE BOXCARS)

## TABLE OF CONTENTS

	<u>Page</u>
SECTION 1. Agreement to Make Loan. . . . .	2
SECTION 2. Security . . . . .	3
SECTION 3. Assignment of Lease. . . . .	5
SECTION 4. Assignment of Management Agreement. . . . .	7
SECTION 5. Repayment of the Loan. . . . .	9
SECTION 6. Prepayment. . . . .	.10
SECTION 7. Issuance of Note. . . . .	.10
SECTION 8. Extension of Payment Term. . . . .	.12
SECTION 9. Representation of the Lender. . . . .	.13
SECTION 10. Assignment by the Lender. . . . .	.13
SECTION 11. Representations, Warranties and Agreements of the Borrower. . . . .	.13
SECTION 12. Conditions Precedent to the Loan. . . . .	.18
SECTION 13. Taxes. . . . .	.23
SECTION 14. Maintenance, Casualty Occurrences, Insurance. . . . .	.24
SECTION 15. Reports and Inspections. . . . .	.26
SECTION 16. Marking of Equipment. . . . .	.27
SECTION 17. Compliance with Laws and Rules. . . . .	.28
SECTION 18. Possession and Use. . . . .	.28
SECTION 19. Prohibition Against Liens. . . . .	.30
SECTION 20. Indemnities and Warranties. . . . .	.31
SECTION 21. Assignments. . . . .	.31
SECTION 22. Events of Default. . . . .	.32

## TABLE OF CONTENTS, Continued

	<u>Page</u>
SECTION 23. Remedies . . . . .	.35
SECTION 24. Maintenance Escrow Account. . . . .	.39
SECTION 25. Applicable State Laws. . . . .	.40
SECTION 26. Recording. . . . .	.41
SECTION 27. Payment of Expenses. . . . .	.41
SECTION 28. Distribution of Funds. . . . .	.41
SECTION 29. Survival of Representations and Warranties; Binding Effect; Entire Agreement . . . . .	.43
SECTION 30. Notices. . . . .	.44
SECTION 31. Miscellaneous. . . . .	.44



## MORTGAGE

This MORTGAGE dated as of October 1, 1979 among CITICORP INDUSTRIAL CREDIT, INC. (the Lender) and C & H RAILWAYS, LTD. (the Borrower).

### W I T N E S S E T H :

WHEREAS, Twitter, Inc. (the Vendor), Rex Railways, Inc. (the Manager) and, through an Assignment dated March 15, 1979 (the Assignment) from Skiva International, Inc. (Skiva), the Borrower are parties to a Conditional Sale Agreement dated as of February 13, 1979 and amended by Amendment Agreement #1 dated as of February 13, 1979 (as so amended, the Conditional Sale Agreement), concerning the railroad equipment described in Annex 1 hereto (the Equipment or Units, and individually, a Unit);

WHEREAS, the Manager and, through the Assignment, the Borrower are parties to a Management Agreement dated as of February 13, 1979 (the Management Agreement) pursuant to which the Manager has agreed to manage and maintain the Equipment;

WHEREAS, the Manager and the Lenawee County Railroad Company, Inc. (the Lessee) have entered into an Equipment Schedule executed on October 4, 1978 by the Manager and on October 9, 1978 by the Lessee, referring to the Equipment (the Equipment Schedule) which amends the Lease Agreement made as of September 23, 1977 (the Lease Agreement) between the Manager and the Lessee, which Lease Agreement, as so amended, provides that the Manager enter into the Equipment Schedule as principal or agent for parties to be named in an amendment to be delivered in accordance with the provisions of the Lease Agreement, as amended;

WHEREAS, the Manager and Skiva delivered to the Lessee a First Amendment to Equipment Schedule (the First Amendment) identifying Skiva as the principal for whom the Manager acts and who owns the Equipment, and, subsequent to the Assignment, the Manager, Skiva and the Borrower delivered to the Lessee a Second Amendment to Equipment Schedule (the Second Amendment) identifying the Borrower as the principal for whom the Manager acts and who owns the Equipment (the Lease Agreement, the Equipment Schedule, the First Amendment and the Second Amendment constituting the Lease);

WHEREAS, The Provident Bank (Provident), the Vendor, the Manager, the Borrower (through the Assignment), and Rex-Noreco, Inc. (Rex-Noreco) are parties to a Finance Agreement dated as of February 13, 1979 (the Finance Agreement) for the financing of the Equipment, pursuant to which Provident provided a portion of the purchase price of the Equipment;

WHEREAS, Provident has acquired substantially all of the right, title and interest of the Vendor in, to and under the

Conditional Sale Agreement pursuant to an Agreement and Assignment dated as of February 13, 1979 (the **Agreement and Assignment**);

**WHEREAS**, Provident has acquired, as security for the payment and performance of the obligations of the Borrower under the Conditional Sale Agreement and the Finance Agreement, all of the right, title and interest of the Borrower, as assignee of Skiva under the Assignment, in, to and under the Lease and the Management Agreement pursuant to a Lease Agreement Assignment dated as of February 13, 1979 (the **Lease Agreement Assignment**) and a Management Agreement Assignment dated as of February 13, 1979 (the **Management Agreement Assignment**), respectively;

**WHEREAS**, the Borrower desires to prepay, pursuant to the provisions of Article 4 of the Conditional Sale Agreement, the Conditional Sale Indebtedness, as defined in the Conditional Sale Agreement (the **Conditional Sale Indebtedness**), and all other amounts owing Provident under the Conditional Sale Agreement;

**WHEREAS**, the Lender is willing to lend to the Borrower, pursuant to the terms and conditions hereof, the amount needed to prepay the Conditional Sale Indebtedness;

**WHEREAS**, the Borrower is willing to repay such loan pursuant to the terms set forth herein and mortgage the Equipment and its rights in the Lease and Management Agreement as security for such loan; and

**WHEREAS**, the Manager, Rex-Noreco and the Lender are entering into a Guaranty and Agreement dated as of October 1, 1979 (the **Guaranty**) pursuant to which the Manager and Rex-Noreco will guaranty the obligations of the Borrower hereunder.

**NOW, THEREFORE**, in consideration of the premises and of other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

#### **SECTION 1. Agreement to Make Loan.**

Subject to the terms and conditions of this Mortgage, the Lender agrees to lend to the Borrower on October 16, 1979 or a date occurring on or before November 15, 1979 as the parties hereto may mutually agree upon (the **Closing Date**), an amount (the **Loan**) equal to the amount of principal of, and interest on, the Conditional Sale Indebtedness, without premium, which is unpaid and outstanding on and as of the Closing Date; **provided, however**, that in no event shall the amount of the Loan exceed \$2,700,000. The Loan shall be paid by the Lender, on behalf of the Borrower, directly to Provident in immediately available funds in Cincinnati, Ohio.

## **SECTION 2. Security**

(a) **Grant of Security Interest.** As security for the due and punctual payment of the principal of and premium, if any, and interest on the Note issued pursuant to Section 7 hereof according to its terms and effect and the performance and observance by the Borrower, the Manager and Rex-Noreco of all the representations, warranties and covenants made by each of them in this Mortgage, the Guaranty or in any agreement, document or certificate delivered in connection herewith or therewith, the Borrower hereby mortgages, assigns, transfers and grants to the Lender a security interest in the following (the Collateral):

(a) Subject to the reservations set forth in Section 3 hereof, all of the Borrower's right, title and interest in and to the Lease and all payments, including, without limitation, all payments of rentals, mileage charges, straight car hire payments or otherwise due or to become due thereunder;

(b) Subject to the reservations set forth in Section 4 hereof, all of Borrower's right, title and interest in and to the Management Agreement and all payments due or to become due thereunder;

(c) All of the Borrower's right, title and interest in and to the Equipment, any accessions thereto and all proceeds thereof; and

(d) Subject to the reservations set forth in Section 24 hereof, all of the Borrower's right, title and interest in and to the Maintenance Escrow Account, as defined in said Section 24;

**provided, however,** that any payments or amounts which have been distributed to the Borrower or to the Manager, as agent for the Borrower, in accordance with the provisions of this Mortgage shall no longer be subject to the security interest of this Mortgage.

**TO HAVE AND TO HOLD** all the aforesaid properties, rights and interests unto the Lender, its successors and assigns forever, nevertheless, for the use and purposes and with the power and authority and subject to the terms and conditions set forth in this Mortgage.

(b) **Payments Under Lease and Management Agreement.** The Borrower agrees to direct the Lessee and the Manager to make all payments to be made by them under the Lease and Management Agreement, respectively, directly to the Lender pursuant to Section 28 hereof or in accordance with the Lender's instructions until such time as the Borrower's obligations hereunder and under the Note have been

discharged. The Borrower agrees that should it receive any such payments directed to be made to the Lender or any proceeds of or with respect to the Equipment or as the result of the sale or other disposition thereof, it will promptly forward such payments to the Lender or in accordance with the Lender's instructions. The Lender agrees to apply payments from time to time received by it (from the Lessee, the Manager, the Borrower or otherwise) with respect to the Equipment, the Lease or the Management Agreement in the manner provided in Section 28 hereof.

(c) **Release of Security Interest in Equipment.** In the event a release by the Lender of the security interest in the Equipment or any part thereof which constitutes security for the Notes shall be necessary or desirable in order to enable the Borrower to carry out any action required or permitted by this Mortgage, the Lender shall execute the same upon receipt of a certificate in form and substance satisfactory to the Lender, executed by the Borrower and the Manager, accompanied by an opinion of counsel reasonably satisfactory to the Lender, each of which shall be to the effect that all necessary actions have been or are being taken in connection with the proposed action to comply with the terms of this Mortgage and that all documents necessary to perfect, protect and preserve the security interest created by this Mortgage with respect to such additional property, if any, which is to be subjected to the security interest of this Mortgage have been duly authorized and properly executed and have been, or are being, delivered to the Lender.

(d) **Release of Lender's Security Interest.** Upon receipt by the Lender of all amounts owing to it under this Mortgage, the Note and the Guaranty,

(a) the mortgage and security interest and all other rights granted by this Mortgage shall cease and become null and void and all of the property, rights and interests granted as security for the Notes shall revert to and revest in the Borrower without any other act or formality whatsoever, and

(b) the Lender shall, at the request and at the expense of the Borrower, execute and deliver to the Borrower such termination statements or other instruments as shall be requisite to evidence the satisfaction and discharge of this Mortgage and the mortgage and security interest hereby created, to release or reconvey to the Borrower all the right, title and interest conveyed to the Lender hereunder, and to release the Borrower from its covenants herein contained.

(e) **Power of Attorney.** The Borrower hereby appoints the Lender the Borrower's attorney, irrevocably, with full power of

substitution, to ask, require, demand, collect, compound and give acquittance for any and all payments due and to become due under or arising out of the Lease or the Management Agreement or the ownership, management, use, lease or other operation of the Equipment, to enforce compliance by the Lessee and the Manager with all the terms and provisions of the Lease and Management Agreement, and to take any action (including, but not limited to, the filing of financing statements or other instruments or documents evidencing the mortgage and security interest granted to the Lender hereby and the drawing of checks or other instruments or orders) file any claims or institute any proceedings which the Lender may deem to be necessary or appropriate to protect and preserve the interest of the Lender in the Collateral, the Lease and Management Agreement.

(f) **Further Assurances.** The Borrower agrees, that at any time and from time to time, upon the written request of the Lender, its successors or assigns, the Borrower will promptly and duly execute and deliver any and all such further instruments and documents as the Lender, its successors or assigns, may reasonably request so as to carry out and effectuate this Mortgage and the intent hereof, including, without limitation, obtaining and maintaining its perfected security interest in the Collateral and enabling the Lender to obtain the full benefits of the assignments of the Lease and the Management Agreement provided in Section 3 and 4 hereof, respectively, and the rights and powers therein granted.

### **SECTION 3. Assignment of Lease.**

(a) The Borrower hereby assigns, transfers, and sets over unto the Lender, as collateral security for the payment and performance of the obligations of the Borrower under this Mortgage and the Note and the obligations of the Manager and Rex-Noreco under the Guaranty, the Lease and all of its rights, powers, privileges, and remedies thereunder.

(b) Notwithstanding the provisions of paragraph (a) of this Section, the Borrower shall be entitled, so long as no Default or Event of Default (as defined in Section 22 hereof) has occurred and is continuing and subject to the terms and provisions of Sections 18 and 22 hereof, to give any notice of an event of default under the Lease to the Lessee and/or to terminate said Lease pursuant to its terms, and, concurrently with the Lender, to exercise all of the rights of the Borrower to enforce the obligations of the Lessee under the Lease.

(c) Notwithstanding any provision of this Mortgage which may be to the contrary, the Borrower shall remain fully liable under the Lease to perform all of its obligations thereunder, and the Lender, its successors or assigns, shall have no obligation or liability under the Lease by reason of or arising out of this Mortgage, nor shall the Lender, its successors, or assigns, be

required or obligated in any manner to perform or fulfill any obligation of the Borrower under or pursuant to the Lease, or to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it, its successors or assigns, or to press or file any claim or to take any other action to collect or enforce the payment of any amounts which may have been assigned to it, its successors or assigns, or to which it, its successors or assigns, may have been entitled at any time or times, **provided that** the Lender shall, as soon as practicable, fully inform the Borrower promptly in writing of any such matters of which it has actual knowledge.

(d) The Borrower does hereby warrant and represent that it has not assigned or pledged, and hereby covenants that it will not assign or pledge, so long as any amount owing under the terms of this Mortgage, the Notes or the Guaranty remains unpaid and outstanding, any of its right, title or interest in or to the Lease to anyone other than the Lender, its successors or assigns and that it will not take or omit to take any action, the taking or omission of which might result in the alteration, amendment, modification, or impairment of the Lease or this Mortgage or of any of the rights created by either of such instruments except as expressly provided in the Lease.

(e) The assignment effected by this Section shall take effect on the Closing Date and the powers and authorities granted to the Lender, its successors or assigns, herein, having been given for valuable consideration, are hereby declared to be irrevocable.

(f) In the event that the Lender has actual notice of an event of default under the Lease, the Lender will give prompt notice thereof to the Borrower.

(g) The Borrower agrees to furnish to the Lender copies of all notices, statements, documents, or schedules received by it under the Lease and the Lender shall cause similar copies to be delivered to the Borrower if received by the Lender.

(h) It is expressly agreed by the parties hereto that the Lease and the rights of the parties thereunder are subordinate and junior in rank to this Mortgage, the Note and the Guaranty and shall be subject to the remedies of the Lender hereunder and under the Note and the Guaranty. The rights of the Lender to the entire unpaid balance of the Note, the payments required to be made into the Maintenance Escrow Account, and any other payments to be made to the Lender under this Mortgage, the Note or the Guaranty shall not be subject to any defense, setoff, counterclaim, or recoupment whatsoever arising out of any breach of any obligation of the Lender with respect to the Equipment nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Borrower, the Lessee or any other person by the Lender.

(i) The obligations of the Lessee under the Lease, including without limitation, the obligation to pay the rental charges described in Section 6 thereof, shall not be subject to any reduction, abatement, defense, set-off, counterclaim or recoupment for any reason whatsoever, which however, shall not prevent the Lessee from asserting any claims separately against the Borrower.

#### **SECTION 4. Assignment of Management Agreement.**

(a) The Borrower hereby assigns, transfers, and sets over unto the Lender, as collateral security for the payment and performance of the obligations of the Borrower under this Mortgage and the Note and the obligations of the Manager and Rex-Noreco under the Guaranty, the Management Agreement and all of its rights, powers, privileges, and remedies thereunder. On or before the Closing Date the Manager and the Borrower shall enter into an amendment to the Management Agreement dated as of October 1, 1979 (the **Management Agreement Amendment**), substantially in the form of Exhibit F hereto, in order to acknowledge that the Conditional Sale Agreement is being refinanced and, accordingly, all references in the Management Agreement to the Conditional Sale Agreement shall thereafter mean this Mortgage. Unless the context otherwise requires, the term "Management Agreement" as used in this Mortgage shall mean the Management Agreement as amended by the Management Agreement Amendment.

(b) Notwithstanding the provisions of paragraph (a) of this Section, the Borrower shall be entitled, so long as no Default or Event of Default (as defined in Section 22 hereof) has occurred and is continuing, to exercise all of the rights of the Borrower under the Management Agreement, including the right to give any notice of a default under the Management Agreement to the Manager and/or to terminate said Management Agreement pursuant to its terms, subject to the terms and provisions of Sections 18 and 22 hereof.

(c) Notwithstanding any provision of this Mortgage which may be to the contrary, the Borrower shall remain fully liable under the Management Agreement to perform all of its obligations thereunder, and the Lender, its successors or assigns, shall have no obligation or liability under the Management Agreement by reason of or arising out of this Mortgage, nor shall the Lender, its successors, or assigns, be required or obligated in any manner to perform or fulfill any obligation of the Borrower under or pursuant to the Management Agreement, or to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it, its successors or assigns, or to press or file any claim or to take any other action to collect or enforce the payment of any amounts which may have been assigned to it, its successors or assigns, or to which it, its successors or assigns, may have been entitled at any time or times, **provided** that the Lender shall, as soon as practicable, fully

inform the Borrower promptly in writing of any such matters of which it has actual knowledge.

(d) The Borrower does hereby warrant and represent that it has not assigned or pledged, and hereby covenants that it will not assign or pledge, so long as any amount owing under the terms of this Mortgage, the Notes or the Guaranty remains unpaid and outstanding, any of its right, title or interest in or to the Management Agreement to anyone other than the Lender, its successors or assigns and that it will not take or omit to take any action, the taking or omission of which might result in the alteration, amendment, modification, or impairment of the Management Agreement or this Mortgage or of any of the rights created by either of such instruments except as expressly provided in the Management Agreement.

(e) The assignment effected by this Section shall take effect on the Closing Date and the powers and authorities granted to the Lender, its successors or assigns, herein, having been given for valuable consideration, are hereby declared to be irrevocable.

(f) In the event that the Lender has actual notice of a default under the Management Agreement, the Lender will give prompt notice thereof to the Borrower.

(g) The Borrower agrees to furnish to the Lender copies of all notices, statements, documents, or schedules received by it under the Management Agreement and the Lender shall cause similar copies to be delivered to the Borrower if received by the Lender.

(h) It is expressly agreed by the parties hereto that the Management Agreement and the rights of the parties thereunder are subordinate and junior in rank to this Mortgage, the Note and the Guaranty and shall be subject to the remedies of the Lender hereunder and under the Note and the Guaranty. The rights of the Lender to the entire unpaid balance of the Note, the payments required to be made into the Maintenance Escrow Account, and any other payments to be made to the Lender under this Mortgage, the Note or the Guaranty shall not be subject to any defense, setoff, counterclaim, or recoupment whatsoever arising out of any breach of any obligation of the Lender with respect to the Equipment nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Borrower, the Manager or any other person by the Lender. The provisions of this paragraph shall not prevent the Manager from asserting any claims separately against the Borrower.



## SECTION 5. Repayment of the Loan.

(a) The Borrower shall repay the Loan, together with interest thereon at the rate and subject to the terms set forth below, in 172 monthly payments of principal and interest on the tenth day of each month of each year, commencing December 10, 1979, until paid, and in the amounts set forth in the amortization schedule attached to the Note issued pursuant to Section 7 hereof (the **Amortization Schedule**), except that the last such payment shall be in an amount sufficient to discharge all unpaid principal of, premium, if any, and accrued interest on, the Loan, in full. Interest only shall be payable on November 10, 1979. In addition to the payments described above, so long as any part of the Loan or any other amount payable under this Mortgage remains unpaid and outstanding the Borrower shall pay to the Lender in consecutive monthly installments, the amount payable to the Maintenance Escrow Account on the date, in the manner and subject to the terms and provisions set forth in Section 24 hereof. Unless modified pursuant to the terms of Section 8 of this Mortgage, the unpaid principal balance of the Loan shall bear interest at the rate per annum equal to 13.0% from and including the Closing Date to but excluding the date payment in full of the Loan is made. The Borrower covenants that each payment made by the Borrower pursuant to this paragraph shall be accompanied by notice identifying the party making such payment or on behalf of which such payment is being made and that it will cause each other party which makes a payment required to be made pursuant to this paragraph to accompany each such payment with notice identifying the party making such payment or on behalf of which such payment is being made.

(b) Interest on the Loan and all other amounts outstanding under this Mortgage shall be determined on the basis of a 360-day year composed of twelve (12) 30-day months, with periods of less than a full calendar month being calculated on the basis of actual days elapsed.

(c) The Borrower will pay interest, to the extent permitted by applicable law, at a rate equal to one percent (1%) per annum in excess of the interest rate payable on the Loan at the time such interest under this paragraph accrues or such lesser amount as shall be legally enforceable, upon all payments remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

(d) All payments provided for in this Mortgage shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts and shall be paid pursuant to the terms of Section 28 hereof. Except as provided in Sections 6 and 14 hereof, the Borrower shall not have the privilege of prepaying any portion of the Loan prior to the date it becomes due.

## SECTION 6. Prepayment.

(a) The Borrower may not prepay all or any part of the Loan during the five year period commencing on the Closing Date, except in the event of a Casualty Occurrence. Upon giving no less than 15 days prior written notice to the Lender of an intended prepayment, the Borrower may prepay all, but not less than all, of the outstanding principal balance of the Loan on any date on which a payment is due (a Payment Date) pursuant to the Note, as defined in Section 7 hereof, occurring after such five year period. On the date of any such prepayment, the Borrower shall pay to the Lender the then outstanding principal balance of the Loan as of such date, the accrued interest to but not including such date and a premium equal to 1% of the then outstanding principal balance of the Loan. Notwithstanding the foregoing, the amount payable by the Borrower in the event of a Casualty Occurrence shall be determined pursuant to the provisions of Section 14 hereof.

(b) Within 30 days after the Lender gives written notice of any termination of the Management Agreement or the Lease pursuant to clause (1) of Section 22(a) hereof, or any declaration of the unpaid balance of the Loan due and payable pursuant to clause (2) of Section 22(a) hereof, the Manager or Rex-Noreco may, upon not less than 5 days prior written notice to the Lender, purchase the Lender's rights and interest in, to and under this Mortgage and the other agreements referred to herein for an amount equal to the unpaid principal balance of the Loan as of the date of such purchase plus accrued interest to, but not including, such date plus any other amounts then due and owing to the Lender under this Mortgage. Upon due payment to the Lender of the amount owing pursuant to this paragraph, the Lender shall transfer to the purchasing party (without representations or warranties) the Note then outstanding and all of its rights (except those to indemnification for losses, damages, injuries, liabilities, claims and demands, and expenses in connection therewith, which may be suffered or incurred by the Lender) in, to and under this Mortgage and the other agreements referred to herein and therein.

## SECTION 7. Issuance of Note.

(a) On the Closing Date the Borrower shall, as evidence of its obligation to repay the Loan pursuant to the terms hereof, execute and deliver to the Lender a promissory note dated the Closing Date (the Promissory Note, and the Promissory Note and any revised Promissory Note delivered pursuant to Section 8 hereof, shall be herein referred to as the Note) in the principal amount of the Loan to be made on the Closing Date and containing the terms and provisions for repayment set forth in Section 5 hereof. The Note shall be payable to the Lender or its assigns and shall be in the form attached hereto as Exhibit A. Upon payment of all amounts due and

owing under the Note, such fact shall be indicated on the Note and the Note shall be returned to the Borrower.

(b) In the event any portion of the Loan shall be repaid prior to maturity by reason of a Casualty Occurrence pursuant to Section 14 hereof, the Lender shall surrender to the Borrower the Note then held by the Lender against receipt from the Borrower of a new Note in the form of Exhibit A hereto which evidences the principal amount of such Loan outstanding following such payment, together with a revised schedule of payments, calculated as provided in Sections 5 and 14 hereof.

(c) Prior to the payment in full of the Note as aforesaid, the Lender shall be entitled to all payments due hereunder and under the Note without being required to surrender the Note. However, the Lender agrees to make appropriate notation on the Note before any transfer thereof to reflect all payment of principal and interest theretofore received.

(d) If any Note shall become mutilated or shall be destroyed, lost or stolen, the Borrower shall, upon the written request of the owner of such Note, execute and deliver in replacement thereof, a new Note payable in the same original principal amount and dated the same date as the Note so mutilated, destroyed, lost or stolen. The Borrower shall make a notation on each new Note of the amount of all payments of principal and premium, if any, theretofore made, or the date to which such payments have been made, on the Note so mutilated, destroyed, lost or stolen and the date to which interest on such old Note has been paid. If the Note being replaced has been mutilated, such Note shall be delivered to the Borrower and shall be cancelled by it. If the Note being replaced has been destroyed, lost or stolen, the owner of such Note shall furnish to the Borrower the indemnity agreement of such owner to save the Borrower harmless from any loss, however remote, including claims for principal of, premium, if any, and interest on the purportedly destroyed, lost or stolen Note, together with evidence of the destruction, loss or theft of such Note and of the ownership thereof; **provided, however,** that if the owner of such Note is the Lender or is a nominee for the Lender or is an Affiliate of the Lender, the written statement of the Lender or such nominee or Affiliate shall be sufficient proof of such destruction, loss or theft and an indemnity agreement of such party signed by a duly authorized officer thereof delivered to the Borrower shall be sufficient security and indemnity. For purposes of this Section, an Affiliate of any specified person shall mean any other person either owning or controlling, directly or indirectly, 50% or more of any class of voting shares of such specified person or controlled by or under common control with such specified person.

## SECTION 8. Extension of Payment Term.

(a) At any time during the term of this Mortgage, the Borrower may request from the Lender an extension of the time period provided in this Mortgage to repay the Loan. Such extension shall be permitted only if approved, in writing, by the Lender, the Manager and Rex-Noreco, each of which approvals may be unreasonably withheld. The Borrower shall give written notice of such request to the Lender, the Manager and Rex-Noreco, which notice shall specify the length of the requested extension (the **Extension Period**) of the payment term provided herein. Such extension shall become effective on the first Payment Date occurring more than 10 days after the Lender, the Manager and Rex-Noreco approve, in writing, the request for extension (the **Effective Date**).

(b) Notwithstanding the provisions of Section 5 hereof, if the payment period of the Loan is extended as provided in this Section:

(i) the unpaid principal balance of the Loan shall bear interest at the rate of 18% per annum from and including the Effective Date to but excluding the date the Loan is paid in full;

(ii) not less than three business days prior to the Effective Date, the Lender shall furnish to the Borrower a revised amortization schedule (the **Revised Schedule**) setting forth the amount and date of each monthly payment of principal and interest to be made in repayment of the Loan;

(iii) on or prior to the Effective Date the Borrower shall execute and deliver a new promissory note substantially in the form of Exhibit A hereto providing for the repayment of the outstanding principal balance of the Loan pursuant to the terms of this Section and the Revised Schedule and, provided that the Lender has received such revised Note, the Lender shall on the Effective Date cancel the Note and return it to the Borrower; and

(iv) commencing on the Effective Date, the then outstanding balance of the Loan shall be paid to the Lender on the dates and in the amounts set forth in the revised Note.

(c) Except as expressly modified by this Section, in the event of an extension of the payment term, all other provisions of this Mortgage shall remain in full force and effect until all amounts owing by Borrower under this Mortgage have been paid in full.

#### **SECTION 9. Representation of the Lender.**

The Lender represents that it is acquiring its interest in the Note for its own account for investment and not with a view to, or for sale in connection with, any distribution thereof, but subject, nevertheless, to any requirement of law that the disposition of its property shall at all times be within its control.

#### **SECTION 10. Assignment by the Lender.**

The Lender may assign, without the consent of the Borrower, the Manager, Rex-Noreco or any other party, any or all of its rights and obligations in, to and under the Lease, the Management Agreement, the Note and this Mortgage. In the event of any such assignment and upon written notice to the Borrower, the Manager and the Lessee, the Lender's assignee shall, to the extent of such assignment, be entitled to the benefits of, and to receive and enforce performance of, all of the covenants and agreements to be performed (i) by the Borrower under this Mortgage and the Note as though the Lender's assignee were named herein as the Lender, (ii) by the Manager under the Management Agreement as though the Lender's assignee were named therein as the "Owner" and (iii) by the Lessee under the Lease, as though the Lender's assignee were named therein as either "RRI", "C&H" or the "Manager"; and shall, to the extent of such assignment, be subject to all of the duties and obligations of the Lender hereunder.

#### **SECTION 11. Representations, Warranties and Agreements of the Borrower.**

(a) **Representations and Warranties.** The Borrower represents and warrants that:

(1) **Due Organization.** It is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware and had the corporate power and authority to enter into the Assignment and the Second Amendment at the time it so entered into each of such agreements and has the corporate power and authority to enter into the Management Agreement Amendment, this Mortgage and the Note and to perform its obligations under this Mortgage and the Note as well as under the Assignment, the Lease and the Management Agreement.

(2) **Due Authorization.** This Mortgage, the Note, the Management Agreement Amendment, the Assignment and the Second Amendment have been duly authorized, executed and delivered by the Borrower and, assuming due authorization, execution and delivery of this Mortgage, the Management Agreement Amendment, the Assignment and the Second Amendment by the other parties thereto, are legal, valid

and binding obligations of the Borrower, enforceable in accordance with their respective terms.

(3) **Enforceability.** The Lease and the Management Agreement are legal, valid and binding agreements, enforceable against the Borrower in accordance with their respective terms.

(4) **No Violation.** The execution and delivery by it of this Mortgage, the Note, the Management Agreement Amendment, the Assignment and the Second Amendment are not, and the performance by it of its obligations under these agreements as well as under the Lease and the Management Agreement will not be, inconsistent with its charter or by-laws, do not and will not contravene any law, governmental rule or regulation, judgment or order applicable to it and do not and will not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which it is a party or by which it is bound or require the consent or approval of, the giving of notice to, the registration with or the taking of any action in respect of or by, the Interstate Commerce Commission or any other Federal, state, local or Canadian governmental authority or agency, except such as have been obtained, given or accomplished.

(5) **Title to the Equipment.** On the Closing Date, the Borrower will have legal title to each Unit of Equipment free and clear of all claims, liens, security interests and other encumbrances (**Liens**) of any nature, except only the rights of the Lender under this Mortgage, the Note and the Guaranty, the rights of the Manager under the Management Agreement and the rights of the Lessee under the Lease. The Borrower, at its own cost and expense, agrees to defend the title to such Units against the demands of all persons, including any demands of Provident.

(6) **Performance Will Not Create Liens.** The performance by it of its obligations under this Mortgage, the Note, the Assignment, the Lease and the Management Agreement will not subject the Collateral, including, without limitation, the Equipment, the Lease or the Management Agreement, to any Lien (other than the Liens provided in this Mortgage) under any indenture, mortgage, contract or other instrument to which it is a party or by which it is bound.

(7) **Totality of Agreement.** The Conditional Sale Agreement, the Lease, the Lease Agreement Assignment, the Management Agreement, the Management Agreement Assignment,

the Assignment, the Agreement and Assignment, the Finance Agreement, the Guaranty and Agreement dated as of February 13, 1979 between Rex-Noreco and Provident, the Consent and Agreement to the Management Agreement Assignment and the Consent and Agreement to the Lease Agreement Assignment comprise the totality of the agreement between all parties regarding the financing of the acquisition by the Borrower, through assignment from Skiva, of the Equipment.

(8) **Prior Perfected Security Interest.** On the Closing Date, assuming that the Manager has not transferred or encumbered its interest in the Lease and subject to the filing of this Mortgage, the Management Agreement Amendment and the Guaranty for recordation with the Interstate Commerce Commission in accordance with the provisions of 49 U.S.C. §11303, the Lender will have a duly perfected prior security interest under the laws of the United States in the Collateral, including, without limitation, the Equipment, the rights of the Borrower under the Management Agreement and the Lease and the rights of the Manager under the Lease.

(9) **No Litigation.** There are no actions, suits, proceedings or investigations pending, or to the knowledge of the Borrower, threatened, before any court, regulatory commission, board or other governmental authority which question the validity of this Mortgage, the Note, the Assignment, the Lease or the Management Agreement, or which might affect the ability of the Borrower to perform its obligations hereunder or thereunder, or which might result, either individually or in the aggregate, in a material adverse change in the business, operations, affairs or condition of the Borrower, except as previously disclosed in writing to the Lender.

(10) **Full Disclosure.** There is no fact known to the Borrower which materially adversely affects or in the future may (so far as the Borrower can now foresee) materially adversely affect the business, operations, earnings, affairs, prospects or condition of the Borrower or any of its properties or assets which has not been disclosed herein or in the other documents, certificates and statements furnished to the Lender in writing specifically for use in connection with the transactions contemplated by this Mortgage.

(11) **Purchase Price of the Equipment.** The Invoiced Purchase Price of the Equipment, as such term is defined in the Conditional Sale Agreement, is \$3,501,500 (the **Invoice Purchase Price**).

(12) **Design of Equipment.** The design, quality, and component parts of each Unit of the Equipment conform to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads (the AAR) reasonably interpreted as being applicable to railroad equipment of the character of such Unit, and each such Unit was new railroad equipment at the time delivered to the Borrower under the Conditional Sale Agreement.

(13) **Compliance with Management Agreement and Lease.** The Borrower has complied with all terms and provisions of the Management Agreement and the Lease applicable to it and has performed all obligations and taken all actions required to be performed or taken by it under the Management Agreement and the Lease, respectively. To the knowledge of the Borrower, the Manager has complied with all terms and provisions of the Management Agreement and the Lease and has performed all obligations and taken all actions required to be performed or taken by it under the Management Agreement and the Lease, respectively, and the Lessee has complied with all terms and provisions of the Lease and has performed all obligations and taken all actions required to be performed or taken by it under the Lease.

(b) **Agreements.** In addition to the other covenants contained in this Mortgage, the Borrower agrees that:

(1) **Financial Information.** The Borrower shall furnish to the Lender:

(a) within 90 days after the close of each fiscal year of the Borrower, a balance sheet and statement of income of the Borrower as at the end of such year, setting forth in each case the comparable figures for the previous fiscal year, accompanied by an opinion of independent certified public accountants, which opinion shall state that such financial statements have been prepared in accordance with generally accepted accounting principles consistently applied, that the examination by such accountants has been made in accordance with generally accepted auditing standards and that such accountants have obtained no knowledge of the occurrence of any Default under this Mortgage; **provided, however,** that if the Borrower does not in any year receive or obtain financial statements certified by independent certified public accountants, such financial statements shall be certified by the chief financial officer of the Borrower as complete and correct;



(b) to the extent prepared by or for the Borrower, within 45 days after the end of each of the first three fiscal quarters of the Borrower, a balance sheet and statement of income of the Borrower as at the end of each such quarter, certified as complete and correct, subject to changes resulting from year-end adjustments, by the principal financial officer of the Borrower;

(c) within each of the periods set forth in (a) and (b) above, a certificate of the President of the Borrower stating that he has reviewed the activities of the Borrower and, to the best of his knowledge, (i) no Default or Event of Default under this Mortgage has occurred during such period, or (ii) if such Default or Event of Default has occurred, specifying the nature and period of continuance thereof and the actions which the Borrower has taken or proposes to take with respect thereto;

(d) upon the occurrence of any Event of Default under this Mortgage, a certificate of the President of the Borrower stating that such an Event of Default has occurred, the nature and period of continuance thereof, and the actions which the Borrower has taken or proposes to take with respect thereto; and

(e) with reasonable promptness, any other information which the Lender shall reasonably request.

(2) **Legal Fees.** Regardless of whether the transactions contemplated by this Mortgage are concluded, the Borrower shall pay any and all legal fees and disbursements of Messrs. Mudge Rose Guthrie & Alexander and any other counsel to the Lender in connection with the drafting and negotiation of this Mortgage, the draft of the refinancing agreement circulated to the parties to this transaction, and certain agreements referred to herein and therein, the closing of the transactions contemplated by this Mortgage, and, if initiated or proposed by the Borrower, any supplement to or modification of such transactions, or any amendment or supplement to this Mortgage or the agreements referred to herein.

(3) **Payment by Provident.** The Borrower shall authorize and direct Provident to pay to the Lender promptly upon receipt of the prepayment of the Conditional Sale Indebtedness, the principal amount in the Maintenance Escrow Account, as defined in the Conditional Sale

Agreement, and any interest which has accrued thereon. The Lender shall, on receipt of such amount from Provident deposit such amount in the Maintenance Escrow Account established pursuant to Section 24 hereof and such amount shall be treated as part of the Maintenance Escrow Account under all provisions of this Mortgage but shall not relieve the Borrower of its obligation to make payments to such Account pursuant to Section 24 hereof.

(4) **Deposit.** The Borrower hereby acknowledges that Rex-Noreco and/or the Manager have paid to the Lender, on behalf of the Borrower, a non-refundable security deposit in the amount of \$26,000. The Lender shall retain \$5,000 of such deposit as a non-refundable commitment fee, which amount shall not be applied to or reduce the obligations of the Borrower under any Section of this Mortgage. If the Closing Date is a date after October 16, 1979, the Lender shall retain an additional \$10,000 of such deposit as a non-refundable commitment fee, which additional amount shall not be applied to or reduce the obligations of the Borrower under any Section of this Mortgage. In the event the Lender makes the Loan to the Borrower pursuant to Section 1 hereof, the part of such deposit not retained pursuant to the second and third sentences of this subparagraph shall be applied by the Lender, on behalf of the Borrower, to the first installment of the repayment of the Loan. In the event the Lender does not make the Loan to the Borrower, the part of such deposit not retained pursuant to the second and third sentences of this subparagraph shall be retained by the Lender as liquidated damages for its costs and expenses (exclusive of legal fees referred to in clause (2) above) in connection with the negotiation of the transactions contemplated hereby.

(5) **Place of Business.** The Borrower represents and warrants that its place of business and chief executive office, as such terms are used in the Uniform Commercial Code, are located in the State of New York. The Borrower shall not change the location of its place of business or chief executive office without giving prior notice to the Lender of such change and the new location of its place of business or chief executive office.

## **SECTION 12. Conditions Precedent to the Loan.**

(a) The obligation of the Lender to make the Loan to the Borrower on the Closing Date is subject to the fulfillment on or before the Closing Date of the following conditions precedent:

(1) No Default or Event of Default under this Mortgage shall have occurred and be continuing on such Closing Date.

(2) This Mortgage, the Guaranty, the Release and Agreement, dated as of October 1, 1979, between the Vendor and the Lender (the Release and Agreement), the Consent and Agreement dated as of October 1, 1979 between the Lessee and the Lender (the Lessee Consent and Agreement), the Consent and Agreement dated as of October 1, 1979 between Skiva and the Lender (the Skiva Consent and Agreement) and the Management Agreement Amendment, in the forms annexed hereto as Exhibits B, C, D, E and F, respectively, shall have been duly executed and delivered by the respective parties thereto.

(3) The Lender shall have received the counterpart or counterpart set delivered to the Interstate Commerce Commission and subsequently re-delivered to Provident of the Lease and the Management Agreement.

(4) The Lender shall have received evidence satisfactory in form and substance to it that the Borrower and the Manager shall have directed Provident to pay to the Lender the balance, including, accrued interest, in the Maintenance Escrow Account managed by Provident pursuant to Article 17 of the Conditional Sale Agreement and Section 6(c) of the Finance Agreement.

(5) The Lender shall have received the Certificates of Acceptance with respect to the Units of Equipment which were executed and delivered by a duly authorized representative of the Manager pursuant to Article 3 of the Conditional Sale Agreement.

(6) The Lender shall have received evidence satisfactory in form and substance to it of the following:

(a) This Mortgage, the Guaranty, the Release and Agreement, the Lessee Consent and Agreement, the Skiva Consent and Agreement and the Management Agreement Amendment have been duly filed for recordation, and the Instrument of Transfer, as defined in subparagraph (11) of this paragraph, has been duly executed by Provident and is in proper form for filing for recordation, with the Interstate Commerce Commission in accordance with the provisions of 49 U.S.C. §11303;

(b) The Lender has a duly perfected prior security interest under the laws of the United States

in the Equipment, the Management Agreement and the Lease;

(c) This Mortgage has been duly registered under the laws regarding the registration of security interests in personal property in the Provinces of New Brunswick, Nova Scotia, and Saskatchewan and no other registration is necessary in order to protect the rights of the Lender in the Equipment and the proceeds thereof under the laws of such Provinces; and

(d) Financing statements evidencing the security interests of the Lender in the Equipment and all proceeds thereof have been duly filed in the Provinces of Manitoba and Ontario and the Lender has a duly perfected prior security interest in the Equipment and such proceeds under the laws of Manitoba and Ontario.

(7) The Lender shall have received favorable opinions, dated such Closing Date, addressed to it and satisfactory in form and scope to its counsel, of:

(a) Counsel for the Borrower to the effect set forth in subparagraphs (1) through (9) of paragraph (a) of Section 11 of this Mortgage;

(b) Counsel for the Manager to the effect set forth in subparagraphs (1) through (6) of paragraph (a) of Section 4 of the Guaranty;

(c) Counsel for Skiva to the effect set forth in paragraph (b) of Section 2 of the Skiva Consent and Agreement;

(d) Counsel for the Vendor to the effect set forth in Section 3 of the Release and Agreement;

(e) Counsel for the Lessee to the effect set forth in paragraph (i) of Section 2 of the Lessee Consent and Agreement; and

(f) Counsel for Rex-Noreco to the effect set forth in subparagraphs (1) through (6) of paragraph (a) of Section 5 of the Guaranty.

(8) The Lender shall have received certificates, dated such Closing Date, of:

(a) the Borrower to the effect that the representations and warranties of the Borrower set

forth in this Mortgage are true and correct in all material respects on and as of such Closing Date with the same effect as though made on and as of such Closing Date, that no Default or Event of Default under the Mortgage shall have occurred and be continuing on such Closing Date, and that attached thereto are true and complete copies of the Conditional Sale Agreement, the Lease, the Management Agreement, the Lease Agreement Assignment and the Management Agreement Assignment, which, prior to the prepayment of the Conditional Sale Indebtedness and payment to Provident of the amounts referred to in subparagraph (10) of paragraph (a) of this Section, are in full force and effect on the Closing Date and have not been modified or amended in any respect;

(b) the Manager to the effect that the representations and warranties of the Manager set forth in the Guaranty are true and correct in all material respects on and as of such Closing Date with the same effect as though made on and as of such Closing Date, that no breach by the Manager in the performance of its duties under the Management Agreement which shall or may have a material adverse effect on the revenues generated by the Equipment shall have occurred and be continuing on such Closing Date, and that attached thereto are true and complete copies of the Conditional Sale Agreement, the Lease, the Management Agreement and the Consent and Agreement to the Management Agreement Assignment, which, prior to the prepayment of the Conditional Sale Indebtedness and payment to Provident of the amounts referred to in subparagraph (10) of paragraph (a) of this Section, are in full force and effect on the Closing Date and have not been modified or amended in any respect; and

(c) Rex-Noreco to the effect that the representations and warranties of Rex-Noreco set forth in the Guaranty are true and correct in all material respects on and as of such Closing Date with the same effect as though made on and as of such Closing Date.

(9) The Lender shall have received a favorable opinion, dated such Closing Date, addressed to it and satisfactory in form and substance to it, of its counsel with regard to such matters as it may reasonably specify.

(10) The Borrower, the Manager and Rex-Noreco shall have paid to Provident all amounts owing to Provident under the Conditional Sale Agreement, the Finance Agreement, the Lease Agreement Assignment, the Management

Agreement Assignment and the Guaranty and Agreement dated February 13, 1979 between Rex-Noreco and Provident and all other amounts owing to Provident arising out of the financing of the Equipment and the prepayment of the Conditional Sale Indebtedness.

(11) Provident shall have delivered an Instrument of Transfer, substantially in the form attached hereto as Exhibit G, transferring its interest in the Equipment to the Borrower and terminating the Conditional Sale Agreement, the Finance Agreement (together with the Promissory Note issued thereunder) the Agreement and Assignment, the Lease Agreement Assignment and the Management Agreement Assignment.

(12) Provident shall have delivered to the Borrower the Promissory Note issued pursuant to the Finance Agreement.

(13) The Borrower shall have executed and delivered to the Lender the Note.

(14) The Lender shall have received such other documents, certificates and opinions as it shall reasonably request.

(b) Each opinion of counsel delivered pursuant to this Section may (i) be subject to appropriate qualifications as to applicable bankruptcy or similar laws affecting enforcement of creditors' rights generally, (ii) be subject to appropriate qualifications concerning the award by courts of relief in lieu of specific performance of contractual provisions, (iii) rely as to matters relating to the laws of jurisdictions other than the United States and the jurisdiction in which counsel is admitted to practice on an opinion of qualified local counsel acceptable to the Lender or its counsel, **provided, however,** that relying counsel's opinion must state that the addressee of relying counsel's opinion may rely upon such opinion of local counsel, (iv) be limited with respect to indentures, orders, mortgages, contracts or other instruments of which counsel has knowledge, (v) omit any reference to the requirement of the consent or approval of, giving of notice to, registration with or taking of any action in respect of or by any Canadian governmental authority or agency and (vi) state that the opinion is subject to qualification regarding the effect of certain laws and judicial decisions upon the enforceability of certain rights and remedies provided in this Mortgage, **provided, however,** that the opinion shall further state that none of such laws in effect on the date of such opinion and none of such judicial decisions make the rights and remedies provided in this Mortgage, taken as a whole, inadequate for enforcing the security interest provided thereby or the realization of the benefits thereof. Counsel for the Borrower, the Manager, the Vendor, the Lessee, Skiva and Rex-Noreco

and, as to matters regarding the recording of documents evidencing the security interest of the Lender and the perfection or registration thereof in Canada, Messrs. McCarthy & McCarthy, special Canadian counsel, are hereby declared to be acceptable local counsel and the opinion of each must state that the others may rely thereon, and when relying on the opinion of any of them as local counsel, relying counsel's opinion need not contain a statement that the addressee of relying counsel's opinion may rely on such local counsel's opinion. Counsel for the Lender may, in giving the opinion required by clause (9) of paragraph (a) of this Section, rely upon the opinions of counsel for the Borrower, the Manager, the Vendor, the Lessee, Skiva and Rex-Noreco insofar as such opinion of counsel for the Lender extends to matters pertaining to the Borrower, the Manager, the Vendor, the Lessee, Skiva and Rex-Noreco, respectively, and may rely upon the opinion of Messrs. McCarthy & McCarthy insofar as such opinion of counsel for the Lender extends to matters pertaining to the recording of documents evidencing the security interest of the Lender and the perfection or registration thereof in Canada.

### SECTION 13. Taxes.

All payments to be made by the Borrower hereunder will be free of expense to the Lender for collection or other charges and will be free of expense to the Lender with respect to the amount of any local, state, federal or foreign taxes (other than income taxes payable with respect to interest and premium on the Note) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by the Collateral or this Mortgage (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called **Impositions**), all of which Impositions the Borrower assumes and agrees to pay on demand. The Borrower will also pay promptly all Impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Lender solely by reason of its security interest therein and will keep at all times all and every part of the Equipment free and clear of all Impositions which might in any way affect the security interest of the Lender or result in a lien upon any part of the Equipment; **provided, however,** that the Borrower shall be under no obligation to pay any Impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the opinion of the Lender, adversely affect the rights of the Lender in or to the Equipment or otherwise under this Mortgage. If any Impositions shall have been charged or levied against the Lender directly and, to the extent funds are not otherwise available, paid by the Lender, the Borrower shall reimburse the Lender upon presentation of an invoice therefor, and any amounts so paid by the Lender shall be secured by and under this Mortgage, and shall bear interest at the same rate as the Loan from the date of payment by the Lender to and including the date of reimbursement by the Borrower. The payment of any such Imposition by the Lender shall

not effect a cure of any Default under Section 22 hereof arising as a result of the failure of the Borrower to pay such Imposition.

**SECTION 14. Maintenance, Casualty Occurrences, Insurance.**

(a) The Borrower will at all times and at its own expense, maintain and keep the Equipment or cause the Equipment to be maintained and kept, in good repair and efficient condition and working order, eligible for interchange with other railroads pursuant to AAR Interchange Standards. The Borrower shall supply all parts, services and other items required in the operation and maintenance of the Equipment. All parts, replacements, substitutions and additions to or for any Equipment shall immediately become Equipment and shall constitute accessions to the Equipment subject to all the terms and conditions of this Mortgage.

(b) In the event that any Unit of the Equipment shall be or become worn out, lost, stolen, destroyed, irreparably damaged, from any cause whatsoever, taken or requisitioned by condemnation or otherwise, or there shall occur any other termination of use of any Unit regardless of the cause (each such occurrence being herein called a **Casualty Occurrence**), the Borrower shall, promptly after it shall have determined that such Unit has suffered a Casualty Occurrence, cause the Lender to be fully notified in regard thereto (including without limitation, a full description of the Casualty Occurrence) and within sixty (60) days thereafter, the Borrower shall pay to the Lender a sum equal to the aggregate Casualty Value (as hereinafter defined) of such Unit as of the date of such payment. Concurrently with each payment of Casualty Value pursuant to this Section, the Borrower shall file, or cause to be filed with the Lender a certificate setting forth the Casualty Value of each Unit as to which such payment is being made. As long as the Lender has not given written notice to the Borrower of any termination of the Management Agreement or the Lease pursuant to clause (1) of Section 22(a) hereof, or any declaration of the unpaid balance of the Loan due and payable pursuant to clause (2) of Section 22(a) hereof, any money received by the Lender pursuant to this paragraph shall be applied to prepay without penalty or premium, ratably in accordance with the unpaid balance of each installment, the Loan, and the Lender will promptly furnish to the Borrower a promissory note containing a revised schedule of payments of principal and interest thereafter to be made and the Borrower shall execute and deliver to the Lender such promissory note in exchange for the cancellation by the Lender and delivery to the Borrower of the Note. As used in this Mortgage, the term **Note** shall include the promissory note issued pursuant to this paragraph upon a payment of Casualty Value in substitution for any Note. Any money received by the Lender after it has given any such written notice of termination or declaration shall be distributed pursuant to paragraph (c) of Section 28 hereof.



(c) Upon payment by the Borrower to the Lender of the Casualty Value of any Unit of the Equipment having suffered a Casualty Occurrence, such Unit shall be released from the mortgage and security interest granted hereunder, without further transfer or action on the part of the Lender, except that the Lender, if requested by the Borrower, will execute and deliver to the Borrower, at the expense of the Borrower, an appropriate instrument confirming such release of all the Lender's right, title and interest in such Unit, in form suitable for recordation, in order that the Borrower may make clear upon the public records the title of the Borrower to such Unit.

(d) The Casualty Value of each Unit of the Equipment suffering a Casualty Occurrence (the **Casualty Value**) shall be deemed to be that portion of the Loan attributable to such Unit remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Section), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Loan in respect to Equipment made pursuant to Section 5 hereof shall be deemed to be a payment on each Unit of the Equipment in like proportion as the Invoiced Purchase Price of such Unit bears to the aggregate Invoiced Purchase Price of the Equipment.

(e) Any condemnation payments, insurance proceeds or other payments resulting from a Casualty Occurrence received by the Lender in respect of Units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Borrower to the Lender in respect of a Casualty Occurrence pursuant to paragraph (b) of this Section. If the Lender shall receive any such payments in respect of such Units suffering a Casualty Occurrence after the Borrower shall have made full payment pursuant to this Section without deduction for such payments, or if such payments received by the Lender are in excess of the Casualty Value of the Unit, the Lender shall pay such payments or such excess, as the case may be, to the Borrower provided that no Default or Event of Default under this Mortgage shall have occurred and be continuing hereunder. All insurance proceeds received by the Lender in respect of any Unit or Units of Equipment not suffering a Casualty Occurrence shall be paid to the Borrower upon proof satisfactory to the Lender that any damages to such Unit in respect of which such proceeds were paid has been fully repaired, or shall be disbursed upon written request of Borrower to any third party in payment for such repairs.

(f) The Borrower shall cause to be procured, maintained and paid for, by itself or its designee, with reputable insurers acceptable to Lender, insurance in an amount at all times at least equal to the Casualty Value of the Units of Equipment then subject to this Mortgage, subject to a deductible not to exceed Five Hundred Dollars (\$500.00), insuring against loss and destruction of, and damage to, each such Unit arising out of theft, loss, damage, destruction, fire,

windstorm, explosion, and all other hazards and risks ordinarily subject to extended coverage insurance, and against such other hazards and risks as are customarily insured against by companies owning or leasing property of a similar character and engaged in a business similar to that engaged in by the Manager.

(g) The Borrower shall further maintain or cause to be maintained with reputable insurers acceptable to the Lender public liability and property damage insurance with respect to the Equipment in amounts not less than the greater of (a) the amounts of insurance maintained by the Borrower, the Manager, or the Lessee with respect to railroad equipment of a similar kind as the Equipment owned or leased by the Borrower, or (b) bodily injury and property damage liability insurance in an amount not less than \$5,000,000. Each liability insurance policy shall be primary without right of contribution from any other insurance which is carried by the Lender or the Borrower and shall expressly provide that all of the limits thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

(h) The Borrower warrants that the foregoing insurance coverage shall be in effect at the time of execution of this Mortgage. Such insurance shall (i) name the Lender as an insured or an additional insured in addition to the Borrower and the Manager with losses to be payable to the Lender, (ii) provide that the policies will not be invalidated as against the Lender because of any violation of a condition or warranty of the policy or application therefor by the Borrower, the Manager or the Lessee and (iii) provide that the policies may be materially altered or cancelled by the insurer only after thirty (30) days prior written notice to the Lender and the Borrower.

#### **SECTION 15. Reports and Inspections.**

(a) On or before May 31 in each year, commencing with the year 1980, the Borrower shall cause to be furnished to the Lender an accurate statement: (a) setting forth as of the preceding February 28 (i) the amount, description and numbers of all Units of the Equipment that have suffered a Casualty Occurrence or are then undergoing repairs (other than running repairs) or have been withdrawn from use pending repairs (other than running repairs) during its preceding fiscal year (or since the date of execution of this Mortgage in the case of the first such statement), and (iii) the dollar amount spent in the maintenance and repair of each Unit during its preceding fiscal year (or since the date of execution of this Mortgage in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as the Lender may reasonably request; and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Section 16 hereof have been preserved or replaced. The Lender shall

have the right, by its agents, to inspect the Equipment and the records of the Borrower, any agent of Borrower, including the Manager, with respect thereto at such reasonable times as the Lender may request during the term of this Mortgage.

(b) The Borrower shall also furnish, or cause to be furnished to the Lender on or before ninety (90) days following the end of its fiscal year in each year during the term of this Mortgage, commencing with the year 1980, audited financial statements, in addition to those to be provided pursuant to Section 11 hereof prepared in accordance with generally accepted accounting principles consistently applied, of the Manager and the Lessee and any other party which shall replace the Manager as manager of the Equipment or the Lessee as lessee of the Equipment under a lease providing for use of the Equipment by such lessee for a period of not less than one (1) year; **provided, however**, that if a party whose financial statements are being furnished does not in any year receive or obtain financial statements certified by independent certified public accountants, such financial statements shall be certified by the chief financial officer of such party as complete and correct.

(c) The Borrower shall prepare, or cause to be prepared, and file, or cause to be filed, to the extent legally permitted, all reports (other than income tax returns), if any, relating to maintenance, registration and operation of the Equipment required to be filed by the Lender with any federal, state or other regulatory agency regarding the Equipment.

#### **SECTION 16. Marking of Equipment.**

(a) The Borrower will cause each Unit of the Equipment to be kept numbered with the identifying number of the Lessee set forth in Annex 1 hereto, or, in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Mortgage to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED UNDER THE INTERSTATE COMMERCE ACT", or other appropriate words designated by the Lender, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lender's interest in the Equipment and its rights under this Mortgage. The Borrower will not permit any such Unit to be placed in operation or exercise any control or dominion over the same until such numbers and markings shall have been made thereon and will replace or will cause to be replaced promptly any such numbers and markings which may be removed, defaced or destroyed. The Borrower will not permit the identifying number of any Unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been delivered to the Lender and

filed, recorded and deposited by or on behalf of the Borrower in all public offices where this Mortgage shall have been filed, recorded and deposited.

(b) Except as provided in the immediately preceding paragraph, the Borrower will not allow the name of any person, association or corporation to be placed on any Unit of the Equipment as a designation that might be interpreted as a claim of ownership; **provided, however,** that the Equipment may be lettered with the names or initials or other insignia customarily used by the Borrower and/or the Manager and/or the Lessee or their respective affiliates.

#### SECTION 17. Compliance with Laws and Rules.

During the term of this Mortgage, the Borrower will comply, and will use its best efforts to cause the Manager, the Lessee and every manager or user of the Equipment to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such manager's or user's operations involving the Equipment may extend, with the interchange rules of the AAR and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws or rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit of the Equipment, the Borrower will conform therewith at its own expense; **provided, however,** that the Borrower may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lender, adversely affect the rights or security interest of the Lender under this Mortgage.

#### SECTION 18. Possession and Use.

(a) The Borrower, so long as no Event of Default shall have occurred and be continuing under this Mortgage, shall be entitled to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Mortgage.

(b) The Borrower may contract with the Manager or a subsequent manager for the maintenance and management of the Equipment as provided in the Management Agreement, and the Manager or a subsequent manager, as the Borrower's agent, may contract with the Lessee or a subsequent lessee for the maintenance and use of the Equipment as provided in the Lease, but the rights of the Manager, the Lessee and any subsequent manager or lessee shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Lender under this Mortgage. The Borrower hereby agrees that it will not exercise any of the remedies permitted in the case of an event of

default under and as defined in the Lease or under and as may be defined in any subsequent lease, including terminating the Lease or any subsequent lease, without the prior written consent of the Lender, which consent shall not be unreasonably withheld (except that the Borrower may, without the consent of the Lender, give notice to the Lessee or any subsequent lessee of an event of default under the Lease or any subsequent lease), and hereby further agrees to furnish to the Lender copies of all summons, writs, processes and other documents served by it or the Manager or any subsequent manager upon the Lessee or any subsequent lessee or served by the Lessee or any subsequent lessee upon it or the Manager or any subsequent manager in connection therewith. The Management Agreement, the Lease and any subsequent management agreement or lease shall not be amended, modified or terminated by the Borrower, and no such subsequent management agreement or lease shall be entered into by the Borrower, without the prior written consent of the Lender, which consent shall not be unreasonably withheld.

(c) So long as no Event of Default shall have occurred and be continuing under this Mortgage, the Equipment may, on and subject to all the terms and conditions of this Mortgage, be used (i) upon the lines of any railroad owned or operated by the Manager or its affiliates (or any other railroad company approved by the Lender) or upon lines of railroad over which the Manager or any such affiliate has trackage or other operating rights or over which railroad equipment of the Manager or any such affiliate is regularly operated pursuant to contract, (ii) upon the lines of any railroad owned or operated by the Lessee or its affiliates, or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights, or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and (iii) upon lines of railroad of connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements.

(d) Notwithstanding any other provisions of this Mortgage:

(i) the Borrower shall not use or permit the use of any Unit of the Equipment in any jurisdiction outside the United States of America unless instruments or documents which, to the satisfaction of the Lender and its counsel, evidence and perfect the security interest of the Lender have been duly filed, recorded or registered in such jurisdiction, except that for a period of ten days following the Closing Date, the Units may be used in Canada regardless of whether instruments evidencing the security interest of the Lender have been filed, recorded or registered therein;

(ii) the Borrower shall not at any time assign or permit the assignment of any Unit of the Equipment to

service involving the regular operation or maintenance thereof outside the United States of America; and

(iii) the Borrower shall not at any time permit more than ten percent (10%) of the Units to be located outside of the United States of America.

#### SECTION 19. Prohibition Against Liens.

(a) The Borrower will pay or discharge any and all sums claimed by any party from, through or under the Borrower or its successors or assigns which, if unpaid, might become a lien, charge, or security interest on or with respect to the Equipment or any Unit thereof, or on or with respect to the rights of the Borrower under the Management Agreement or the Lease, other than the security interest granted the Lender hereunder, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Lender, adversely affect the security interest of the Lender in or to the Equipment, the Management Agreement and the Lease and the payments due or to become due under each, or otherwise under this Mortgage. Any amounts paid by the Lender in discharge of liens, charges or security interests upon the Equipment or on the rights of Borrower under the Management Agreement or the Lease shall be secured by and under this Mortgage, and shall bear interest at the same rate as the Loan from the date of payment by the Lender to and including the date of reimbursement by the Borrower. The payment of any such amount shall not effect a cure of any Default under Section 22 hereof arising as a result of the failure of the Borrower to pay such amount.

(b) This covenant will not be deemed breached by reason of liens for taxes, assessments, or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

(c) The Borrower will pay or discharge any and all claims, liens, charges or security interests claimed by any party from, through or under the Borrower or its successors or assigns, not arising out of the transactions contemplated hereby (including tax liens arising out of the receipt of the income and proceeds from the Equipment), which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any Unit thereof, or the Borrower's interest in the Management Agreement and the Lease and the payments to be made under each, but the Borrower shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or

administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Lender, adversely affect the security interest of the Lender in or to the Equipment or otherwise under this Mortgage or in and to the Management Agreement and the Lease and the payments to be made under each.

#### **SECTION 20. Indemnities and Warranties.**

(a) The Borrower agrees to indemnify, protect and hold harmless the Lender and its successors, agents, servants and assigns from and against all losses, damages, injuries, liabilities, claims, and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to reasonable counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of terms of this Mortgage or the transactions contemplated hereby, the ordering, acquisition, use, lease, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident, in connection with the operation, use, condition, possession, storage, or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when the Equipment remains subject to this Mortgage except, however, any losses, damages, injuries, liabilities, claims, and demands whatsoever arising out of any tort or breach of warranty by the builder of the equipment, or resulting from the willful misconduct or gross negligence of the Lender. This covenant of indemnity shall continue in full force and effect notwithstanding the payment, in full, of the Loan or the termination of this Mortgage in any manner whatsoever.

(b) The Borrower will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any Unit of or all the Equipment regardless of the cause of such damage, destruction or loss, except for damage, destruction or loss resulting from the willful misconduct or gross negligence of the Lender. The obligation of the Borrower to repay the Loan pursuant to the terms hereof shall not be subject to any claim, counterclaim, defense or set-off whatsoever which the Borrower may have against the builder of the Equipment, the Vendor, the Manager, the Lessee or any other party, or the breach by any of such parties of any of their respective covenants and agreements in any document or instrument.

#### **SECTION 21. Assignments.**

(a) The Borrower will not (a) except as provided in Section 18 hereof, transfer the right to possession of any Unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Mortgage without the prior written consent of the Lender, which consent may be withheld for any reason. The Borrower shall at all times maintain its corporate existence, and it shall not consolidate with or merge into any other corporation or

convey, transfer or lease substantially all of its assets as an entirety to any other Person (which means any individual, corporation, partnership, joint venture, association, trust, unincorporated organization or government or agency thereof), without the prior written consent of the Lender, which consent may be withheld for any reason.

(b) In the event of any assignment or successive assignments by the Lender, the Borrower will, upon request by the Lender's assignee, change, or cause to be changed, the markings on each side of each Unit of the Equipment so as to be consistent with the interest of such assignee in the Equipment, to the extent necessary to conform to any requirements of the laws of the jurisdictions in which the Equipment shall be operated. The cost of such markings in the event of any such assignment shall be borne by the assignee.

## **SECTION 22. Events of Default.**

(a) In the event that any one or more of the following events of default (each an Event of Default) shall occur and be continuing:

(i) the Borrower, the Manager and Rex-Noreco shall fail to pay in full when due, any payment of principal and interest on the Loan, any payment to the Maintenance Escrow Account or any other sum payable by the Borrower as provided in this Mortgage within five (5) days after notice given to the Borrower, the Manager and Rex-Noreco;

(ii) the Borrower or the Manager shall, for more than thirty (30) days after the Lender shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Mortgage, the Management Agreement, the Lease, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept and performed or to make provision satisfactory to the Lender for such compliance or if compliance or performance with such terms and provisions cannot be completed within thirty (30) days, the Borrower or the Manager shall have failed to take the necessary steps to commence to cure the failure to comply or perform, such steps to be satisfactory to the Lender;

(iii) any proceeding shall be commenced by or against the Borrower for any relief which includes, or might result in, any modification of the obligations of the Borrower hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments or indebtedness, reorganizations, arrangements, compositions



or extensions (other than a law which does not permit the readjustment of the obligations of the Borrower under this Mortgage), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), if all the obligations of the Borrower under this Mortgage shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Borrower or for its property in connection with any proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within thirty (30) days after such appointment, if any, or sixty (60) days after such proceedings shall have been commenced, whichever shall be earlier;

(iv) the Borrower shall make or suffer any unauthorized assignment or transfer of this Mortgage or any interest herein or any unauthorized transfer of the right to possession of any Unit of the Equipment, and this Mortgage or any interest therein or on any Unit of Equipment, as the case may be, shall not be reassigned or retransferred within ten (10) days of written notice from the Lender to do so;

(v) a breach by Manager in the performance of its duties under the Management Agreement (which breach shall have materially impaired or adversely affected the revenues generated by the Equipment) shall have occurred and be continuing for a period of thirty (30) days after notice from the Lender (hereinafter a **Management Agreement Default**) and such Management Agreement Default shall continue for a period of ninety (90) days without the Borrower, with the written consent of the Lender, having terminated the Management Agreement, and entered into a new management agreement or otherwise provided for the management of the Equipment by a manager, acceptable to the Lender in its sole and absolute discretion, upon terms acceptable to the Lender in its sole and absolute discretion;

(vi) an event of default (as defined in the Lease) shall have occurred under the Lease and shall be continuing for ninety (90) days without the Borrower, with consent of the Lender, having terminated the Lease pursuant to the terms thereof, and entered into a new lease or otherwise provided for the use of the Equipment by a lessee or other user acceptable to the Lender, in its sole

discretion, upon terms acceptable to Lender, in its sole and absolute discretion;

(vii) a Unit shall be operated or allowed to operate without the insurance required by Section 14 hereof in full force and effect;

(viii) the Manager or Rex-Noreco shall fail to perform or observe any covenant or agreement to be performed by such party, or the Manager and Rex-Noreco shall both fail to perform or observe any covenant or agreement to be performed by one of such parties, under the Guaranty, the Manager shall fail to perform or observe any covenant or agreement to be performed it under Section 2 of the Management Agreement Amendment or the Lessee shall fail to perform or observe any covenant or agreement to be performed by it under the Lessee Consent and Agreement, and such failure shall continue for 30 days after written notice thereof from the Lender to the Manager and Rex-Noreco; or

(ix) any representation or warranty made by the Borrower in this Mortgage or made by the Manager or Rex-Noreco in the Guaranty or made by the Lessee in the Lessee Consent and Agreement shall prove to have been incorrect in any material respect when such representation or warranty was made or given;

then at any time after the occurrence of any Event of Default and so long as such event shall be continuing the Lender may, upon written notice to the Borrower, the Lessee and the Manager, upon compliance with any mandatory legal requirements then in force and applicable to such action by the Lender, (1) cause the Management Agreement, (upon occurrence of an Event of Default under subparagraph (v) hereof) or the Lease (upon occurrence of an Event of Default under subparagraph (vi) hereof) as they relate to the Equipment and any other agreement with respect to the Equipment, or any Unit or Units thereof, then in effect immediately upon such notice to terminate with respect to the Equipment and/or (2) declare the entire unpaid balance of the Loan together with the premium, if any, and interest thereon then accrued and unpaid, together with all other amounts then due and owing under this Mortgage, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and premium and interest shall bear interest from the date of such Event of Default at the rate per annum specified in Section 3 hereof as being applicable to amounts remaining unpaid after becoming due and payable. Immediately upon any such declaration the Borrower shall pay to the Lender such unpaid balance of the Loan together with premium, if any, and interest thereon accrued and unpaid, together with all other amounts then due and owing under this Mortgage. Upon an Event of Default, the Lender shall be entitled to recover judgment

for the entire unpaid balance of the Loan, together with all other amounts due hereunder with interest as aforesaid, and to collect such judgment out of any property of the Borrower, wherever situated. The Borrower shall promptly notify the Lender of any Default under this Mortgage of which it has knowledge. For all purposes of this Mortgage, the term **Default** shall mean any event which, with the giving of notice, lapse of time or both, would mature into an Event of Default.

(b) The Lender may, at its election, waive any Default or Event of Default and its consequences and rescind and annul any Default or Event of Default or notice of termination of the Management Agreement, the Lease or any such other agreement by notice to the Borrower and the Manager in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such Default or Event of Default had occurred and notice of termination of the Management Agreement, the Lease or any such other agreement had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Borrower that time is of the essence of this Mortgage and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent Default or Event of Default or impair any rights or remedies consequent thereon.

(c) If any Event of Default should occur hereunder, the Lender may thereafter make the payment or perform or comply with the agreement, the nonpayment, nonperformance or noncompliance with which caused such Event of Default, and the amount of such payment and the amount of the reasonable expenses of the Lender incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest at the rate calculated pursuant to paragraph (c) of Section 5 hereof, shall be payable by the Borrower upon demand by the Lender, and such action by the Lender shall not be deemed a cure or waiver of any Default or Event of Default hereunder.

### **SECTION 23. Remedies**

(a) At any time during the continuance of an Event of Default, the Lender may, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Lender, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the Units thereof, without liability to return to the Borrower any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Section expressly provided, and may remove the same from possession and use of the Borrower, the Manager or the Lessee or any other person and for such purpose may enter upon the premises of the Borrower or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any

available trackage and other facilities or means of the Borrower, subject to all mandatory requirements of due process of law.

(b) In case the Lender shall demand possession of the Equipment pursuant to this Mortgage and shall designate a reasonable point or points for the delivery of the Equipment to the Lender, the Borrower shall, at its own expense and risk as the Lender shall direct:

(i) forthwith and in the usual manner (including, but not by way of limitation, causing prompt telegraphic and written notice to be given to the Association of American Railroads and all railroads to which any Unit or Units of the Equipment have been interchanged to return the Unit or Units so interchanged) cause the Equipment to be placed upon such storage tracks of the Manager or the Lessee as the Lender reasonably may designate; or, in the absence of such designation, as the Borrower or the Manager may select; **provided, however,** that such storage on the tracks of the Manager or the Lessee will not be required if such storage will interfere with the operations of the railroad of the Manager or the Lessee;

(ii) permit the Lender to store the Equipment on such tracks or other premises at the risk of the Borrower without charge for rent or storage until the Equipment has been sold, leased or otherwise disposed of by the Lender; and

(iii) cause the Equipment to be transported to any reasonable place on the lines of railroad operated by the Manager or the Lessee or any of their affiliates or to any connecting carrier for shipment, all as directed by the Lender.

During any storage period, the Borrower will, at its own cost and expense, insure, maintain and keep each such Unit in good order and repair and will permit the inspection of the Equipment by the Lender, the Lender's representatives and prospective purchasers, lessees and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Lender shall be entitled to a decree against the Borrower (but not against any officer, shareholder or agent of Borrower) requiring specific performance hereof and the Borrower hereby irrevocably appoints the Lender as attorney in fact to execute any and all documents, instruments and notices, in the name and on behalf of the Borrower, to cause the Equipment to be delivered hereunder or comply with the terms of any court decree. The Borrower hereby expressly waives any and all claims against the

Lender and its agent or agents for damages of whatever nature in connection with any retaking of any Unit of the Equipment in any reasonable manner.

(c) At any time during the continuance of an Event of Default, the Lender, with or without retaking possession thereof, at its election and upon reasonable notice to the Borrower, and any other persons to whom the law may require notice of the time and place, may sell the Equipment or one or more of the Units thereof, free from any and all claims of the Borrower, or any other party claiming from, through or under the Borrower, at law or in equity, at public or private sale and with or without advertisement as the Lender may determine; **provided, however**, that if, prior to such sale and prior to the making of a contract for such sale, the Borrower should tender full payment of the total unpaid balance of the Loan, together with interest thereon accrued and unpaid and all other payments due under this Mortgage as well as expenses of the Lender in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Lender's reasonable attorneys' fees, then in such event the Lender shall release its security interest in the Equipment. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Lender in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited to the amount due to the Lender under the provisions of this Mortgage.

(d) The Borrower shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Section 30 hereof. If such sale shall be a private sale, it shall be subject to the rights of the Borrower to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Lender may bid for and become the purchaser of the Equipment, or any Unit thereof, so offered for sale. In the event that the Lender shall be the purchaser thereof, it shall not be accountable to the Borrower (except to the extent of surplus money received as hereinafter provided in this Section), and in payment of the purchase price therefor the Lender shall be entitled to have credited to the amount owing by it for such purchase price all sums due to the Lender hereunder.

(e) If an Event of Default has occurred and the Lender has accelerated the Loan under Section 22 hereof, the Borrower hereby appoints the Lender its exclusive marketing agent with respect to any and all interest of the Borrower in the Equipment, which appointment is coupled with an interest and is irrevocable. In its capacity as marketing agent hereunder, the Lender shall have the absolute right to sell, lease, transfer or otherwise dispose of all or any part of the Equipment, to any party whomsoever, as the Lender shall in the exercise of its reasonable discretion, deem advisable. In

furtherance of the Lender's rights hereunder, the Borrower hereby agrees to execute any and all documents, agreements, instruments, releases and notices requested by the Lender to sell lease, transfer or otherwise dispose of the Equipment, or any Unit thereof; and further hereby appoints the Lender as attorney-in-fact to execute any and all documents, instruments, notices or agreements for the sale, lease, transfer or other disposition of the Equipment, or any Unit, in the name and on behalf of the Borrower, including without limitation bills of sale and leases. In the event the Equipment is sold and/or leased, after an Event of Default and acceleration of the Loan, the Borrower hereby agrees and shall pay to the Lender an amount equal to two and one-half percent (2 1/2%) of the pro-rata share of the outstanding principal balance of the Loan applicable to each such Unit sold or leased. The sums of money realized by the Lender hereunder shall be applied in accordance with the provisions of this Section.

(f) Each and every power and remedy hereby specifically given to the Lender shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Lender. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Lender in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Borrower, the Lessee or the Manager shall not otherwise alter or affect the Lender's rights or the Borrower's obligations hereunder. The Lender's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Borrower's obligations or the Lender's rights hereunder with respect to any subsequent payments or default therein.

(g) If, after applying all sums of money realized by the Lender under the remedies herein provided, there shall remain any amount due to it under the provisions of this Mortgage, the Borrower shall pay the amount of such deficiency to the Lender upon demand, together with interest thereon from the date of such demand to the date of payment at the rate per annum specified in Section 3 hereof as being applicable to amounts remaining unpaid after becoming due and payable, and, if the Borrower shall fail to pay such deficiency, the Lender may bring suit therefor and shall be entitled to recover a judgment therefor against the Borrower. If, after applying as aforesaid all sums realized by the Lender, there shall remain a surplus in the possession of the Lender, such surplus shall be paid to the Borrower.

(h) The Borrower will pay all reasonable expenses, including attorneys' fees, incurred by the Lender in enforcing its remedies under the terms of this Mortgage. In the event that the Lender shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Lender may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

(i) Except as herein agreed to the contrary, the foregoing provisions of this Section are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

#### **SECTION 24. Maintenance Escrow Account.**

(a) As long as any of the principal balance of the Loan or any other amounts due the Lender under the terms of this Mortgage are unpaid and outstanding, the Borrower shall pay to the Lender on each Payment Date and on the fifteenth day of each month after the last such date an amount equal to forty dollars (\$40) per Unit for each Unit subject to this Mortgage on the date of such payment. These payments shall be held by the Lender in an escrow account (the **Maintenance Escrow Account**) and shall be invested by the Lender in a "money-market" fund managed by an investment banking or securities brokerage firm located in New York, New York, which shall be chosen by mutual agreement of the Manager, the Borrower and the Lender, which fund shall credit interest to each investor's account on a daily basis and shall permit the withdrawal of principal and interest at any time at the discretion of the investor, without penalty. The terms of such "money-market" fund shall provide that withdrawals may be made from such fund only upon written order executed by both the Lender and either the Borrower or, on behalf of the Borrower, the Manager. Such withdrawals shall be made subject to the terms and provisions of this Section. Interest credited to the Maintenance Escrow Account shall remain part of the Maintenance Escrow Account and may be used in the same manner, and subject to the same conditions, as amounts paid into such Account by the Borrower.

(b) So long as no Default or Event of Default has occurred and is continuing, the Manager, on behalf of the Borrower, shall have the right, upon five (5) days prior written notice to the Lender, to withdraw funds from the Maintenance Escrow Account when necessary to maintain the Equipment in the condition required pursuant to Section 14 hereof. Such notice shall specify the Units for the maintenance or repair of which such funds will be withdrawn and shall describe the work to be performed on such Units with such funds. Upon receipt of proper and timely notice the Lender shall release such funds from the Maintenance Escrow Account, and, to the extent such funds are then invested in a "money-market" fund, the Lender shall execute such instruments as are required to withdraw funds from the "money-market" fund in which they are invested. Within 30 days of the completion of such maintenance, the Manager, on behalf of the

Borrower, shall submit to the Lender evidence of the expenditure of the withdrawn funds for such maintenance or repairs.

(c) So long as no Default or Event of Default has occurred and is continuing and upon the condition that the amount in the Maintenance Escrow Account equals or exceeds the total of (i) the outstanding principal balance of the Loan, (ii) the interest accrued but unpaid thereon, (iii) a premium equal to one percent (1%) of the outstanding principal balance of the Loan and (iv) all other amounts owing to the Lender pursuant to the provisions of this Mortgage, the Borrower may prepay the Loan pursuant to Section 6(a) hereof and pay all other amounts owing to the Lender under the provisions of this Mortgage using funds in the Maintenance Escrow Account. In the event the Borrower desires to use such funds, it shall direct the Lender to transfer to its own account funds from such funds then in the Maintenance Escrow Account equal in amount to the unpaid principal balance of the Note, the interest and premium thereon plus all other amounts owing the Lender pursuant to the provisions of this Mortgage, the Note and the Guaranty.

(d) Upon the occurrence of an Event of Default hereunder, the Lender may retain the amount in the Maintenance Escrow Account and apply part or all of such amount to costs of maintenance of the Equipment or the payment of the outstanding principal of and premium and interest on the Loan and costs and expenses of exercising or enforcing its rights under this Mortgage, as the Lender may determine in its sole discretion.

(e) Upon payment to the Lender of the full amount of the Loan plus all interest accrued thereon and all other amounts owing under this Mortgage and the performance of all of the obligations and covenants of the Borrower contained herein, the amount, if any, in such Maintenance Escrow Account shall be paid to the Borrower.

#### **SECTION 25. Applicable State Laws.**

(a) Any provision of this Mortgage prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Mortgage. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Borrower to the full extent permitted by law.

(b) Except as otherwise provided in this Mortgage, the Borrower, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more Units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of



the Lender's rights under this Mortgage and any and all rights of redemption.

#### **SECTION 26. Recording.**

The Borrower will, from time to time, do and perform any other act and will execute, acknowledge, deliver, and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) or will cause to be filed, registered, deposited or recorded (and, whenever necessary, refiled, reregistered, rerecorded or redeposited), at its expense any and all further instruments required by law or reasonably requested by the Lender for the purpose of proper protection in the United State of America or any foreign jurisdiction in which any Unit of Equipment may be used or located, to the satisfaction of the Lender and its counsel, of its security interest in the Collateral and its rights under this Mortgage or for the purpose of carrying out the intention of this Mortgage and any assignment hereof. The Borrower will promptly furnish to the Lender evidences of such filing, registering, depositing or recording and of such publication of notice of such deposit and an opinion or opinions of counsel with respect thereto, each satisfactory to the Lender and its counsel.

#### **SECTION 27. Payment of Expenses.**

In addition to the expenses to be paid by the Borrower pursuant to Section 11(b)(2) of this Mortgage, the Borrower will pay all reasonable costs and expenses (other than the fees and expenses of the Vendor, the Manager and the Guarantor and their respective attorneys), payment of which shall not be illegal under any laws of the United States, any State or any foreign jurisdiction, incident to the drafting and negotiation of this Mortgage and certain agreements referred to herein and the closing of the transactions contemplated by this Mortgage, and all costs and expenses, including legal fees, which are incurred in connection with the filings and recordings made pursuant to Section 26 hereof and, if initiated or proposed by the Borrower, any supplement or modification to the Mortgage.

#### **SECTION 28. Distribution of Funds.**

(a) All amounts and moneys, resulting from the ownership, management, use, lease, or other operation of the Equipment, whether as rental payments, mileage charges, car hire payments or otherwise, including, but not limited to, all amounts received from the Lessee under the Lease and all amounts payable by the Borrower under this Mortgage and by the Manager under the Management Agreement and by the Lessee under the Lease shall be paid directly to the Lender, at 399 Park Avenue, New York, New York 10043, Attention: Manager, Contracts Administration. Such moneys and amounts shall be paid to the Lender without any deduction or set-off whatsoever for amounts due other parties and in a manner so that the Lender has immediately available

funds in New York, New York on the date each such amount is due and payable.

(b) Provided that the Lender has not given written notice to the Borrower, the Lessee and the Manager of any termination of the Management Agreement or the Lease pursuant to clause (1) of Section 22(a) hereof or any declaration of the unpaid principal balance of the Loan due and payable pursuant to clause (2) of Section 22(a), all amounts received by the Lender, with the exception of payments of Casualty Value pursuant to Section 14 hereof and amounts representing condemnation payments, insurance proceeds and other payments resulting from a Casualty Occurrence which are to be paid to the Borrower under the terms of the fifth paragraph of such Section 14, shall be applied on the Payment Date next following receipt of any such amount as follows:

(A) **first**, to the payment to the Lender of the interest then due and payable on the Loan pursuant to the terms of this Mortgage and of the Note;

(B) **second**, to the payment to the Lender of the installment of principal of, and premium, if any, on, the Loan then due and payable pursuant to the terms of this Mortgage and of the Note;

(C) **third**, to the deposit in the Maintenance Escrow Account of such amounts as are due and payable thereto under Section 24 hereof;

(D) **fourth**, to the payment to the Lender of any and all other amounts due and payable to it under this Mortgage, including, but not limited to amounts due and payable under the provisions of Sections 22 and 23 hereof; and

(E) **fifth**, the balance, if any, to the Manager, as agent for the Borrower;

and (ii) amounts representing payments of Casualty Value to the Lender shall be applied as set forth in paragraph (b) of Section 14 hereof and amounts representing condemnation payments, insurance proceeds and other payments resulting from a Casualty Occurrence shall be paid to the Borrower to the extent so provided by the terms of paragraph (e) of such Section 14.

(c) All amounts, including payments of Casualty Value, condemnation payments, insurance proceeds and other payments resulting from a Casualty Occurrence pursuant to Section 14 hereof, received by the Lender after it has given written notice of any termination of the Management Agreement or the Lease pursuant to clause (1) of Section 22(a) hereof, or any declaration of the unpaid principal

balance of the Loan due and payable pursuant to clause (2) of Section 22(a) shall be applied upon receipt as follows:

(i) **first**, to the payment to the Lender of all amounts payable to it pursuant to Section 20 hereof;

(ii) **second**, to the payment to the Lender of the interest then due and payable on the Loan pursuant to the terms of this Mortgage and of the Note;

(iii) **third**, to the payment to the Lender, in full, of the outstanding principal balance of the Loan, together with the premium then due pursuant to the terms of this Mortgage and of the Note;

(iv) **fourth**, in the manner provided by subparagraph (D) of paragraph (b) of this Section;

(v) **fifth**, in the manner provided by subparagraph (E) of paragraph (b) of this Section.

**SECTION 29. Survival of Representations and Warranties; Binding Effect; Entire Agreement**

(a) **Survival.** All agreements, representations and warranties contained in this Mortgage, the documents referred to herein and any document or certificate delivered pursuant hereto or thereto or in connection herewith or therewith shall continue in effect following the execution and delivery of this Mortgage and shall continue in effect so long as any amount owing under the terms hereof remains outstanding and unpaid.

(b) **Binding Effect.** All agreements, representations and warranties contained in this Mortgage, the documents referred to herein and any document or certificate delivered pursuant hereto or thereto or in connection herewith or therewith or from time to time thereafter shall bind the party making the same and its successors and assigns and shall inure to the benefit of each party for whom made and their respective successors and assigns.

(c) **Entire Agreement.** This Mortgage, the Note, the Lease, the Management Agreement, the Guaranty, the Release and Agreement, the Lessee Consent and Agreement, the Skiva Consent and Agreement and the Provident Release constitute the entire agreement of the parties hereto and thereto with respect to the subject matter hereof and thereof and supercede all prior understandings and agreements of such parties, including, but not limited to, a commitment letter, dated July 12, 1979, from the Lender to the Manager, with respect to the subject matter hereof and a letter dated October 4, 1979 from the Lender to the Manager with respect to the extension of the Lender's commitment.

### **SECTION 30. Notices.**

All communications and notices with respect to the transactions contemplated by this Mortgage shall be in writing and shall become effective when deposited in the United States mail, with proper postage for first-class mail, prepaid, addressed (a) if to the Lender, to 399 Park Avenue, New York, New York 10043, Attention: Manager, Contracts Administration; (b) if to the Borrower, to 1350 Broadway, New York, New York 10018, Attention: Isaac Chehebar, with a copy to the Manager at its notice address pursuant to the provisions of this Section; and (c) if to the Manager, to 616 Palisade Avenue, Englewood Cliffs, New Jersey 07632; or at such other address as any party hereto may from time to time designate by notice duly given in accordance with the provisions of this Section to the other parties hereto.

### **SECTION 31. Miscellaneous.**

(a) **Execution.** This Mortgage may be executed in any number of counterparts and by the different parties hereto on separate counterparts, all of which, when so executed and delivered, shall constitute a single instrument, but the counterpart or counterpart set, which shall be marked "Original", delivered to the Interstate Commerce Commission for recordation and subsequently redelivered to the Lender shall be deemed the original counterpart and all other counterparts hereof shall be deemed duplicates thereof and shall be marked "Duplicate". Although this Mortgage is dated as of the date first above written for convenience, the actual dates of the execution hereof by the parties hereto are respectively the dates set forth under the signatures hereto.

(b) **Governing Law.** This Mortgage shall be governed by, and be construed in accordance with, the laws of the State of New York, **provided, however,** that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303, such additional rights arising out of the filing, recording, registering, or depositing of this Mortgage, the Lease and Management Agreement and any rights arising out of the marking on the Units of Equipment.

(c) **Choice of Forum.** The Borrower, to the fullest extent permitted by law, (a) designates the United States District Court for the Southern District of New York, as a forum where any and all matters pertaining to this Mortgage may be adjudicated, and (b) by the foregoing designation, consents to the jurisdiction and venue of such Court for the purpose of adjudicating any and all matters pertaining to this Mortgage. Each party hereto not having an agent for service of process of record with the Secretary of State of the State of New York hereby irrevocably appoints the Secretary of State of the State of New York as the agent for service of process in any proceeding instituted hereunder and each party hereto agrees that service of process upon such agent, in accordance with the then-prevailing and

applicable law as hereinabove agreed to, with a copy of such summons or other instrument mailed to such party by United States registered mail at the address specified in Section 30 hereof, shall, upon receipt by such party, constitute proper service on such party for all purposes without objections of any kind whatsoever. Notwithstanding the provisions of this paragraph, any party hereto shall also be entitled to institute legal proceedings to adjudicate matters pertaining to this Mortgage against the other in any other competent court.

(d) **Amendments, Supplements, etc.** Neither this Mortgage nor any of the terms hereof may be amended, supplemented, waived or modified (herein referred to as a **change**) orally, but only by an instrument in writing signed by the party against which enforcement of such change is sought.

(e) **Headings.** The headings of the sections and paragraphs of this Mortgage have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions hereof.

**IN WITNESS WHEREOF**, the parties hereto have caused this Mortgage to be duly executed by their respective officers thereunto duly authorized as of the date set forth above.

**CITICORP INDUSTRIAL CREDIT, INC.**

By W. H. Bergen

Title: Vice President


Date: 10/16/79

Attest: Kenneth L. Paul

[Seal]



C&H RAILWAYS, LTD.

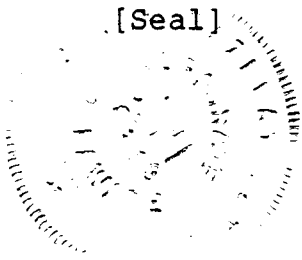
By 

Title: V. P.

Date: 10/16/79

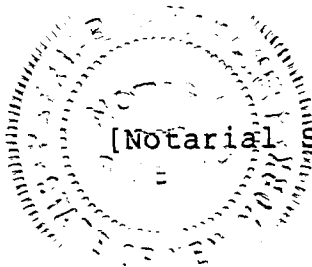
Attest: 

[Seal]



State of New York           )  
                                  ss.:  
County of New York        )

On this 16<sup>th</sup> day of October, 1979, before me personally appeared W. H. Bergen, to me personally known, who being by me duly sworn, says that he is the Vice President of Citicorp Industrial Credit, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



[Notarial Seal]

Patrice A. Marchese  
Notary Public

PATRICE A. MARCHESE  
Notary Public, State of New York  
No. 00-100881  
Qualified in Bronx County  
Certificate filed in New York County  
Commission Expires March 30, 1981

State of New York           )  
                                  ss.:  
County of New York        )

On this \_\_\_\_\_ day of October, 1979, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of C&H Railways, Ltd., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

State of New York           )  
                                  ss.:  
County of New York        )

On this \_\_\_\_\_ day of October, 1979, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of Citicorp Industrial Credit, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

State of New York           )  
                                  ss.:  
County of New York        )

On this 16 day of October, 1979, before me personally appeared Isaac Shekhar, to me personally known, who being by me duly sworn, says that he is the Vice Pres of C&H Railways, Ltd., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Martin S. Sussman  
Notary Public

[Notarial Seal]

**MARTIN S. SUSSMAN**  
Notary Public, State of New York  
No. 30-4500640  
Qualified in Nassau County  
Commission Expires March 30, 1981



ANNEX 1

DESCRIPTION OF EQUIPMENT

<u>Quantity</u>	<u>Description</u>	<u>Manufacturer</u>	<u>Identification Numbers</u>	<u>Price Per Unit</u>
100	70-Ton 50'6" Boxcars	Pullman Incorporated (Pullman Standard Division)	LCRC 2001-2100, inclusive	\$35,015

**EXHIBIT A  
to  
Mortgage**

[Form of Note]

No .

\$

**C & H RAILWAYS, LTD.**

**SECURED PROMISSORY NOTE**

**C & H RAILWAYS, LTD.**, a Delaware corporation (the **Borrower**), for value received, hereby promises to pay to **CITICORP INDUSTRIAL CREDIT, INC.**, or assigns, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, the principal sum of \$ and to pay interest (computed on the basis of a year of twelve 30-day months, with periods of less than a full calendar month being calculated on the basis of actual days elapsed) on the unpaid principal balance thereof at the rate per annum equal to 13.0% from and including the date of this Note to but excluding the date payment in full of the principal amount of this Note is made. Interest only shall be payable on November 10, 1979. Principal and interest payments shall be made in installments on the tenth day of each month in each year commencing December 10, 1979 and ending March 10, 1994, except that the last such payment shall be in an amount sufficient to discharge all unpaid principal of, premium, if any, and accrued interest on, this Note, in full. The amount of each such installment shall be as set forth on the Amortization Schedule attached hereto, subject to adjustment as provided in the Mortgage dated as of October 1, 1979 between the Borrower and Citicorp Industrial Credit, Inc., as Lender (the **Mortgage**).

This Note shall bear interest, to the extent permitted by applicable law, at the rate of 14.0% per annum (**Overdue Rate**), on any part of the principal hereof and, to the extent permitted by law, interest hereon, not paid when due for any period during which the same shall be overdue.

The principal hereof and premium, if any, and interest hereon shall be payable in immediately available funds in New York, New York, subject to the provisions of Section 28 of the Mortgage.

This Note is issued by the Borrower pursuant to the terms of the Mortgage. Reference is hereby made to the Mortgage for a statement of the rights of the holder of, and the nature and extent of the security for, this Note.

This Note is not subject to prepayment except upon the occurrence of certain events as provided in Sections 6 and 14 of the Mortgage.

In case an Event of Default under the Mortgage (as defined therein) shall occur and be continuing, the unpaid principal of this Note together with premium, if any, and accrued interest hereon may become or be declared due and payable in the manner, with the effect and subject to the conditions, provided in the Mortgage.

The Borrower waives presentment and demand for payment, notice of dishonor, protest and notice of protest of this Note, and shall pay all costs of collection when incurred, including reasonable attorneys' fees.

The provisions of this Note shall inure to the benefit of and be binding upon any successor to the Borrower and shall extend to any holder hereof.

**IN WITNESS WHEREOF**, the Borrower has caused this Note to be duly executed by one of its officers thereunto duly authorized, as of the date hereof.

Dated:

**C & H RAILWAYS, LTD.**

By \_\_\_\_\_  
Title: \_\_\_\_\_

Exhibit B  
to Mortgage

---

GUARANTY AND AGREEMENT

Dated as of October 1, 1979

among

REX RAILWAYS, INC.,

REX-NORECO, INC.

and

CITICORP INDUSTRIAL CREDIT, INC.

---

(COVERING 100 GENERAL PURPOSE BOXCARS)

**GUARANTY AND AGREEMENT** dated as of October 1, 1979 among **REX RAILWAYS, INC.** (the **Manager**), **REX-NORECO, INC.** (**Rex-Noreco**, and **Rex-Noreco** and the **Manager** shall be herein referred to as the **Guarantors** and each as a **Guarantor**) and **CITICORP INDUSTRIAL CREDIT, INC.** (the **Lender**).

**W I T N E S S E T H :**

**WHEREAS**, **Twitter, Inc.** (the **Vendor**), the **Manager** and, through an Assignment dated March 15, 1979 (the **Assignment**) from **Skiva International, Inc.** (**Skiva**), **C&H Railways, Ltd.** (the **Borrower**) are parties to a Conditional Sale Agreement dated as of February 13, 1979 as amended by Amendment Agreement #1 dated as of February 13, 1979 (as so amended, the **Conditional Sale Agreement**), concerning the railroad equipment described in Annex A thereto (the **Equipment**);

**WHEREAS**, the **Manager** and, through the Assignment, the **Borrower** are parties to a Management Agreement dated as of February 13, 1979 (the **Management Agreement**) and the **Manager** and the **Lenawee County Railroad Company, Inc.** (the **Lessee**) are parties to a Lease Agreement made as of September 23, 1977 and amended by the Equipment Schedule executed on October 4, 1978 by the **Manager** and on October 9, 1978 by the **Lessee**, referring to the **Equipment**, and the First and Second Amendments to Equipment Schedule (as so amended, the **Lease**);

**WHEREAS**, the **Vendor** has assigned substantially all of its right, title and interest in, to and under the Conditional Sale Agreement to The Provident Bank (**Provident**) pursuant to an Agreement and Assignment dated as of February 13, 1979;

**WHEREAS**, the **Borrower** desires to prepay the Conditional Sale Indebtedness, as defined in the Conditional Sale Agreement (the **Conditional Sale Indebtedness**), and all other amounts owing **Provident** under the Conditional Sale Agreement;

**WHEREAS**, the **Borrower** desires the **Lender** to loan to it an amount equal to the outstanding Conditional Sale Indebtedness, plus accrued interest thereon, pursuant to the terms of a Mortgage dated as of October 1, 1979 between the **Lender** and the **Borrower** (the **Mortgage**, and unless otherwise defined herein, all terms used herein shall have the respective meanings assigned to them in the Mortgage), which loan (the **Loan**) will be secured by a mortgage of the Collateral therein described, which includes **Equipment**, the **Borrower's** rights in, to and under the Lease and the Management Agreement and the **Manager's** rights in, to and under the Lease; and

**WHEREAS**, the **Guarantors** desire to have the **Lender** make the **Loan** to the **Borrower** pursuant to the terms of the Mortgage, and the **Lender** is willing to make such **Loan** pursuant to the Mortgage upon the condition, among others, that each **Guarantor** execute and deliver this Guaranty and Agreement.

NOW, THEREFORE, in consideration of the agreements of the Lender under the Mortgage and the premises hereof and thereof and other good and valuable consideration, the parties hereto agree as follows:

**SECTION 1. Guaranty of Payment.** The Guarantors, jointly and severally, hereby irrevocably and unconditionally guaranty to the Lender the due and punctual payment of all moneys and amounts (including, without limitation, expenses and indemnities) payable by the Borrower pursuant to the Mortgage or under the Note, as defined in the Mortgage, when and as the same shall become due and payable (whether at stated maturity or by required prepayment or by declaration, acceleration or otherwise) pursuant to and in accordance with the terms of the Mortgage. Such guaranty is an absolute, present and continuing guaranty of payment and not of collection and is in no way conditional or contingent upon any attempt to collect from the Borrower or any other guarantor of the obligations of the Borrower, including the other Guarantor, or upon any other action, occurrence or circumstance whatsoever. In case the Borrower shall fail so to pay any such principal, interest or other amount, the Guarantors shall pay the same, in lawful money of the United States of America at the place specified in the Mortgage, together with interest, at the rate applicable to overdue payments under the Mortgage, on any overdue principal (including any overdue prepayment of principal) and (to the extent permitted under applicable law) on any overdue installment of interest, and on any other overdue amount, from the date the same became due and payable to the date of payment. Each Guarantor shall be individually obligated to pay all amounts owing pursuant to this Section and Section 15 of this Guaranty and Agreement.

**SECTION 2. Guarantors' Obligations Absolute and Unconditional.** The obligations of each Guarantor hereunder shall be absolute and unconditional, irrespective of the validity, regularity or enforceability of the Mortgage or any other agreement referred to herein or therein, shall not be subject to any counterclaim, setoff, deduction or defense based upon any claim that either Guarantor may have against the Lender hereunder or otherwise, and shall remain in full force and effect without regard to, and shall not be released, discharged or in any way affected by any circumstance or condition whatsoever (whether or not the Guarantor shall have any knowledge or notice thereof), including, without limitation: (a) any amendment or modification of or supplement to the Mortgage or any other agreement referred to herein or therein which does not modify in any material respect the obligations of the Guarantors hereunder or which each Guarantor has approved, in writing, or any assignment or transfer of any of such agreements or of any interest therein, or any furnishing or acceptance of additional security, or any release of any security, for obligations of the Borrower under the Mortgage or otherwise; (b) any waiver, consent, extension, indulgence or other action or inaction under or in respect of any such agreement or instrument, or

any exercise or non-exercise of any right, remedy, power or privilege under or in respect of any such agreement or instrument or this Guaranty and Agreement; (c) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding with respect to the Borrower or its properties or its creditors; (d) any merger or consolidation of the Borrower into or with any other corporation or any sale, lease or transfer of any or all of the assets of the Borrower to any other person; (e) any failure on the part of the Borrower for any reason to perform or comply with any of the terms of any other agreement with one or both Guarantors; or (f) any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor. The Guarantors, severally and jointly, covenant that their obligations hereunder will not be discharged except by complete performance of the obligations guaranteed hereby.

**SECTION 3. Waiver.** Each Guarantor unconditionally waives (a) notice of any of the matters referred to in Section 2 hereof, (b) all notices which may be required by statute, rule of law or otherwise, other than those notices specifically required by the terms of this Guaranty and Agreement or the Mortgage, to preserve any rights of the Lender against such Guarantor, including, without limitation, presentment to or demand of payment from the Borrower with respect to any amount due, notice to the Borrower of default or protest for non-payment or dishonor, (c) any right to the enforcement, assertion or exercise by the Lender of any right, power or remedy conferred in the Mortgage and (d) any requirement of diligence on the part of the Lender.

**SECTION 4. Representations, Warranties and Agreements of the Manager.**

(a) **Representations and Warranties.** The Manager represents and warrants that:

(1) **Due Organization.** It is a corporation duly organized and validly existing in good standing under the laws of the State of New Jersey and had the corporate power and authority to enter into the Lease and the Management Agreement at the time it entered into such agreements and has the corporate power and authority to enter into this Guaranty and Agreement and an amendment to the Management Agreement dated as of October 1, 1979 between the Manager and the Borrower (the **Management Agreement Amendment**) and has the corporate power and authority to perform its obligations under this Guaranty and Agreement, the Lease, the Management Agreement and the Management Agreement Amendment.

(2) **Due Authorization and Enforceability.** This Guaranty and Agreement, the Lease, the Management Agreement and the Management Agreement Amendment have been duly authorized, executed and delivered by the Manager and, assuming due authorization, execution and delivery by the other parties thereto, are legal, valid and binding obligations of it, enforceable in accordance with their respective terms.

(3) **No Violation.** The execution and delivery by the Manager of this Guaranty and Agreement, the Lease, the Management Agreement and the Management Agreement Amendment are not, and the performance by it of its obligations under each as well as, through the Management Agreement Amendment, the Mortgage will not be, inconsistent with its charter or by-laws, do not and will not contravene any law, governmental rule or regulation, judgment or order applicable to it and do not and will not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which it is a party or by which it is bound or require the consent or approval of, the giving of notice to, the registration with or the taking of any action in respect of or by, the Interstate Commerce Commission or any other Federal, state, local or Canadian governmental authority or agency, except such as have been obtained, given or accomplished.

(4) **Title to the Equipment.** On the Closing Date, each Unit of Equipment and the Manager's right, title and interest in and to the Lease will be free and clear of all claims, liens, security interests and other encumbrances of any nature (**Liens**) arising by, through or under the Manager other than the rights of the Manager under the Management Agreement, as amended by the Management Agreement Amendment, the rights of the Lessee under the Lease, and the rights of the Lender under the Mortgage, the Note and this Guaranty and Agreement.

(5) **Performance Will Not Create Liens.** The performance by it of its obligations under this Guaranty and Agreement, the Lease, the Management Agreement and the Management Agreement Amendment (and, through the Management Agreement Amendment, the Mortgage) will not subject the Equipment, the Lease or the Management Agreement, as amended by the Management Agreement Amendment, to any Lien (other than the Liens provided in the Mortgage and this Guaranty and Agreement) under any indenture, mortgage, contract or



other instrument to which it is a party or by which it is bound.

(6) **No Litigation.** There are no actions, suits, proceedings or investigations pending, or to the knowledge of the Manager, threatened, before any court, regulatory commission, board or other governmental authority which question the validity of this Guaranty and Agreement, the Mortgage, the Lease, the Management Agreement or the Management Agreement Amendment, or which might affect the ability of the Manager to perform its obligations hereunder or thereunder, or which might result, either individually or in the aggregate, in a material adverse change in the business, operations, affairs or condition of the Manager, except as previously disclosed in writing to the Lender.

(7) **Full Disclosure.** There is no fact known to the Manager which materially adversely affects or in the future may (so far as the Manager can now foresee) materially adversely affect the business, operations, earnings, affairs, prospects or condition of the Manager or any of its properties or assets which has not been disclosed herein or in the other documents, certificates and statements furnished to the Lender in writing specifically for use in connection with the transactions contemplated by the Mortgage.

(8) **Design of Equipment.** The design, quality, and component parts of each Unit of the Equipment conform to all Department of Transportation and Interstate Commerce Commission (hereinafter called the ICC) requirements and specifications and to all standards recommended by the Association of American Railroads (hereinafter called the AAR) reasonably interpreted as being applicable to railroad equipment of the character of such Unit, and each such Unit was new railroad equipment at the time delivered to the Borrower under the Conditional Sale Agreement.

(9) **Status of Equipment.** The 100 box cars described in and bearing the identification numbers set forth in Annex 1 to the Mortgage are subject to the Management Agreement and all of the terms and provisions thereof and are currently under lease to the Lessee pursuant to the Lease and are subject to all of the terms and provisions thereof.

(10) **Performance of Obligations.** The Manager has complied with all terms and provisions of the

Lease and the Management Agreement, has performed all obligations and taken all actions required to be performed or taken by it under the Lease and Management Agreement, respectively, and has not transferred or encumbered its interest in the Lease.

(b) **Agreements.** The Manager agrees and covenants that:

(1) **Delivery of Certificate.** On the Closing Date the Manager shall deliver to the Lender a certificate to the effect that the representations and warranties of the Manager set forth in this Guaranty and Agreement are true and correct in all material respects on and as of such Closing Date with the same effect as though made on and as of such Closing Date, that no breach by the Manager in the performance of its duties under the Management Agreement, as amended by the Management Agreement Amendment, which shall or may have a material adverse effect on the revenues generated by the Equipment shall have occurred and be continuing on such Closing Date, and that attached thereto are true and complete copies of the Conditional Sale Agreement, the Lease, the Management Agreement and the Consent and Agreement to the Management Agreement Assignment, which prior to the prepayment of the Conditional Sale Indebtedness and payment to Provident of the amounts referred to in subparagraph (10) of paragraph (a) of Section 12 of the Mortgage are in full force and effect on the Closing Date and have not been modified or amended in any respect.

(2) **Delivery of Opinion.** On the Closing Date, the Manager shall deliver to the Lender a favorable opinion of counsel, dated the Closing Date, to the effect set forth in subparagraphs (1) through (6) of paragraph (a) of this Section, which opinion may be subject to the qualifications set forth in paragraph (b) of Section 12 of the Mortgage.

(3) **Restriction on Assignment.** So long as any amounts due and payable by the Borrower under the Mortgage remain unpaid and outstanding, the Manager shall not assign, transfer or encumber its right, title and interest in, to or under the Lease and the Management Agreement or any of the payments due or to become due thereunder other than as provided in Section 6 hereof.

**SECTION 5. Representations, Warranties and Agreements of Rex-Noreco.**

(a) **Representations and Warranties.** Rex-Noreco represents and warrants that:

(1) **Due Organization.** It is a corporation duly organized and validly existing in good standing under the laws of the State of New Jersey and has the corporate power and authority to enter into and perform its obligations under this Guaranty and Agreement.

(2) **Due Authorization and Enforceability.** This Guaranty and Agreement has been duly authorized, executed and delivered by Rex-Noreco and, assuming due authorization, execution and delivery by the other parties hereto, is a legal, valid and binding obligation, enforceable in accordance with its terms.

(3) **No Violation.** The execution and delivery by Rex-Noreco of the Guaranty and Agreement is not, and the performance by it of its obligations under it will not be, inconsistent with its charter or by-laws, do not and will not contravene any law, governmental rule or regulation, judgment or order applicable to it and do not and will not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which it is a party or by which it is bound or require the consent or approval of, the giving of notice to, the registration with or the taking of any action in respect of or by, the Interstate Commerce Commission or any other Federal, state, local or Canadian governmental authority or agency, except such as have been obtained, given or accomplished.

(4) **Title to the Equipment.** Each Unit of Equipment is free and clear of all claims, liens, security interests and other encumbrances of any nature (Liens) arising by, through or under Rex-Noreco.

(5) **Performance Will Not Create Liens.** The performance by it of its obligations under this Guaranty and Agreement will not subject the Equipment, the Lease or the Management Agreement, as amended by the Management Agreement Amendment, to any Lien (other than the Liens provided in the Mortgage) under any indenture, mortgage, contract or other instrument to which it is a party or by which it is bound.

(6) **No Litigation.** There are no actions, suits, proceedings or investigations pending, or to the knowledge of Rex-Noreco, threatened, before any court, regulatory commission, board or other governmental authority which question the validity of this Guaranty and Agreement, or which might affect the ability of Rex-Noreco to perform its obligations hereunder, or which might result, either individually or in the aggregate, in a material adverse change in the business, operations, affairs or condition of Rex-Noreco, except as previously disclosed in writing to the Lender.

(7) **Full Disclosure.** There is no fact known to Rex-Noreco or any of its subsidiaries which materially adversely affects or in the future may (so far as Rex-Noreco or any of its subsidiaries can now foresee) materially adversely affect the business, operations, earnings, affairs, prospects or condition of Rex-Noreco or any of its subsidiaries or any of their respective properties or assets which has not been disclosed herein or in the other documents, certificates and statements furnished to the Lender in writing specifically for use in connection with the transactions contemplated hereby and by the Mortgage.

(b) **Agreements.** Rex-Noreco agrees and covenants that:

(1) Rex-Noreco shall furnish to the Lender:

(A) promptly upon their becoming available, a copy of each regular or periodic report and any registration statement or prospectus filed by Rex-Noreco or the Manager with the Securities and Exchange Commission or any successor agency, including, but not limited to, Rex-Noreco's Annual Report on Form 10-K, Quarterly Report on Form 10-Q and any Current Reports on Form 8-K, **provided, however,** that if at any time Rex-Noreco is not required to file periodic reports pursuant to the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder, it shall furnish to the Lender, in lieu of the information set forth in this subparagraph (A), the financial information set forth in paragraph(b)(2) of this Section 5.

(B) within 90 days after the close of each fiscal year of Rex-Noreco, a certificate of the chief financial officer of Rex-Noreco stating that he has reviewed the activities of Rex-Noreco and the Manager,

and to the best of his knowledge, (i) no Default or Event of Default, as defined in the Mortgage, has occurred during such period, and (ii) if such Default or Event of Default has occurred, specifying the nature and period of continuance thereof and the actions which Rex-Noreco or the Manager has taken or proposes to take with respect thereto;

(C) upon the occurrence of any Event of Default under the Mortgage of which Rex has knowledge, a certificate of an authorized officer of Rex-Noreco stating that such an Event of Default has occurred, the nature and period of continuance thereof, and the actions which Rex-Noreco or the Manager has taken or proposes to take with respect thereto; and

(D) with reasonable promptness, any other information which the Lender shall reasonably request.

(2) If at any time Rex-Noreco is not required to file periodic reports pursuant to the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder, Rex-Noreco shall furnish to the Lender in lieu of the requirements of paragraph (b)(1)(A) of this Section the following:

(A) within 90 days after the close of each fiscal year of Rex-Noreco, a consolidated balance sheet and consolidated statement of income of Rex-Noreco as at the end of such year, setting forth in each case the comparable figures for the previous fiscal year, accompanied by an opinion of independent certified public accountants, which opinion shall state that such financial statements have been prepared in accordance with generally accepted accounting principles consistently applied, that the examination by such accountants has been made in accordance with generally accepted auditing standards and that such accountants have obtained no knowledge of the occurrence of any Default under the Mortgage; and

(B) within 45 days after the end of the first three fiscal quarters of Rex-Noreco, a consolidated balance sheet and consolidated statement of income of Rex-Noreco as at the end of each such quarter, certified as complete and correct, subject to changes resulting from year-end adjustments, by the principal financial officer of Rex-Noreco;

(3) On the Closing Date, Rex-Noreco shall execute and deliver to the Lender a certificate, dated the Closing Date, to the effect that the representations and warranties of Rex-Noreco set forth in this Guaranty and Agreement are true and correct in all material respects on and as of such Closing Date with the same effect as though made on and as of such Closing Date.

(4) On the Closing Date, Rex-Noreco shall deliver to the Lender a favorable opinion of counsel, dated the Closing Date, to the effect set forth in subparagraphs (1) through (6) of paragraph (a) of this Section, which opinion may be subject to the qualifications set forth in paragraph (b) of Section 12 of the Mortgage.

**SECTION 6. Covenants of the Guarantors.** Rex-Noreco and the Manager each hereby covenant and agree that so long as any amount, the payment of which is guaranteed hereby, is unpaid and outstanding:

(a) Except as set forth in paragraph (b) of this Section, Rex-Noreco and the Manager shall each keep in full force and effect its existence as a corporation, its good standing as a duly qualified or licensed foreign corporation authorized to do business in each jurisdiction where the conduct of its business requires such qualification, and such of its other rights and franchises as are necessary or desirable for the advantageous conduct of its business.

(b) Neither Rex-Noreco nor the Manager shall consolidate with any other corporation or merge into any other corporation or sell or otherwise transfer all or substantially all of its property and assets to any other corporation (any such corporation resulting from such consolidation or into which Rex-Noreco or the Manager shall have been merged or to which such sale or other transfer shall have been made being herein called the **Successor Corporation**), unless:

(i) the Successor Corporation shall be a corporation incorporated under the laws of any state of the United States of America;

(ii) the Successor Corporation shall expressly assume the due and punctual performance of all the obligations and liabilities of whichever of Rex-Noreco or the Manager is its predecessor corporation under this Guaranty and Agreement and shall consent and agree in writing (by an instrument in form and substance satisfactory to the Lender) to assume and

perform all of the obligations and liabilities of its predecessor corporation hereunder; **provided, however,** that no such sale or other transfer shall release Rex-Noreco or the Manager from any of their respective obligations or liabilities under this Guaranty and Agreement and the predecessor corporation shall remain liable, severally but not jointly, with the Successor Corporation;

(iii) the Successor Corporation shall not immediately thereafter be in breach of any provision of this Guaranty and Agreement; and

(iv) the Lender shall consent to such consolidation, merger or transfer of assets, which consent shall not be unreasonably withheld.

(c) Each Guarantor shall duly pay and discharge or cause to be paid and discharged all taxes, assessments and governmental charges levied upon it or against its properties or assets or any of its franchises, business, income or profits by any Federal, state or local government or taxing authority in the United States prior to the date on which any penalty or interest accrues thereon, unless and to the extent that such tax, assessment or charge shall be contested in good faith and by appropriate proceedings by such Guarantor.

(d) In the event that either Guarantor pays to the Lender amounts the payment of which is guaranteed hereunder, such Guarantor shall, in writing at the time of the payment, identify the source and application of such payment.

#### **SECTION 7. Assignment as Security.**

(a) As additional security for the Loan to be made by the Lender pursuant to the Mortgage, the Manager hereby mortgages, assigns and transfers unto the Lender and grants the Lender a security interest in all of the Manager's right, title and interest, both as agent and in its individual capacity, in and to the Lease and all payments due or to become due thereunder.

(b) Notwithstanding the provisions of paragraph (a) of this Section, the Manager shall be entitled, so long as no Default or Event of Default (as defined in Section 22 of the Mortgage) has occurred and is continuing and subject to the terms and provisions of Sections 18 and 22 of the Mortgage, to exercise all of its rights and obligations under the Lease and the Management Agreement.

(c) Notwithstanding any provision of this Guaranty and Agreement or the Mortgage which may be to the contrary, the Manager shall remain fully liable under the Lease to perform all of its obligations thereunder, and the Lender, its successors or assigns, shall have no obligation or liability under the Lease by reason of or arising out of this Guaranty and Agreement or the Mortgage, nor shall the Lender, its successors, or assigns, be required or obligated in any manner to perform or fulfill any obligation of the Manager under or pursuant to the Lease, or to make any payment received by it, its successors or assigns, or to press or file any claim or to take any other action to collect or enforce the payment of any amounts which may have been assigned to it, its successors or assigns, or to which it, its successors or assigns, may have been entitled at any time or times, **provided that** the Lender shall, as soon as practicable, fully inform the Manager promptly in writing of any such matters of which it has actual knowledge.

(d) The Manager does hereby warrant and represent that it has not assigned or pledged, and hereby covenants that it will not assign or pledge, so long as any amount owing under the terms of the Mortgage, the Notes or this Guaranty remains unpaid and outstanding, any of its right, title or interest in or to the Lease to anyone other than the Lender, its successors or assigns.

(e) The assignment effected by this Section shall take effect on the Closing Date and the powers and authorities granted to the Lender, its successors or assigns, herein, having been given for valuable consideration, are hereby declared to be irrevocable.

(f) In the event that the Lender has actual notice of any event of default under the Lease, the Lender will give prompt notice thereof to the Manager.

(g) The Manager agrees to furnish to the Lender copies of all notices, statements, documents, or schedules received by it under the Lease and the Lender shall cause similar copies to be delivered to the Manager if received by the Lender.

**SECTION 8. Extension of Term.** If the period for repayment of the Loan should be extended pursuant to Section 8 of the Mortgage, the obligations of each Guarantor hereunder shall be extended and modified, without further act of any party, so as to constitute a guaranty, subject to the provisions of this Guaranty and Agreement, of the due and punctual payment of all amounts payable by the Borrower under the Mortgage as modified by the provisions of Section 8 thereof. The consents of the Manager and Rex-Noreco given



under the terms of Section 8 of the Mortgage shall constitute the consent of each such party to the extension and modification of their obligations under this Guaranty and Agreement.

**SECTION 9. Purchase Option.** Within 30 days after the Lender gives written notice of any termination of the Management Agreement or the Lease pursuant to clause (1) of Section 22(a) of the Mortgage, or any declaration of the unpaid principal balance of the Loan due and payable pursuant to clause (2) of Section 22(a), either Guarantor may, upon not less than 5 days prior written notice to the Lender, purchase the Lender's rights and interest in, to and under the Mortgage and Section 7 hereof for an amount equal to the unpaid principal balance of the Loan as of the date of such purchase plus accrued interest to, but not including, such date plus any other amounts then due and owing the Lender under the Mortgage. Upon due payment to the Lender of the amount owing pursuant to this paragraph, the Lender shall transfer to the purchasing party (without representations or warranties) the Note then outstanding and all of its rights (except those to indemnification for losses, damages, injuries, liabilities, claims and demands, and expenses in connection therewith, which may be suffered or incurred by the Lender) in, to and under the Mortgage and Section 7 hereof.

**SECTION 10. Cure Rights.** The failure of the Borrower to make payment of any amount due under the Mortgage shall not constitute an Event of Default under subparagraph (i) of paragraph (a) of Section 22 of the Mortgage if either of the Guarantors pays to the Lender the full amount due and payable by the Borrower within 5 days after the Lender gives notice of such failure to make payment to such Guarantor pursuant to the Mortgage and such payment is made in compliance with all of the terms and provisions of the Mortgage.

**SECTION 11. Remedies.** In case the Guarantors shall fail forthwith to pay upon demand of the Lender any amounts due pursuant to the provisions hereof, the Lender shall be entitled and empowered to institute any action or proceeding at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree against either Guarantor or both Guarantors for the full amount due and collect in the manner provided by law out of the property of either Guarantor or both Guarantors, wherever situated, the monies adjudged or decreed to be payable.

**SECTION 12. Subrogation.** Upon payment in full of all amounts owing to the Lender pursuant to the Mortgage, each Guarantor shall be subrogated to the rights of the Lender under the Mortgage to receive payments and distributions thereunder until each Guarantor shall have been paid in full an amount equal to the aggregate of all sums paid by such Guarantor pursuant to this Guaranty and Agreement.

**SECTION 13. Consent to Prepayment, Loan and Assignment.**

Rex-Noreco and the Manager each hereby consents, notwithstanding any of the terms or provisions of the Lease and the Management Agreement, as amended by the Management Agreement Amendment, which may be to the contrary, to all of the terms and provisions of the Mortgage and to the transactions contemplated thereby, including, but not limited to, the prepayment by the Borrower of the Conditional Sale Indebtedness, as defined in the Conditional Sale Agreement, and the mortgage of and grant of a security interest to the Lender in the Collateral.

**SECTION 14. Assignment of Mortgage by the Lender.**

The Lender may assign, without the consent of the Borrower, the Manager, Rex-Noreco or any other party, any or all of its rights and obligations in, to and under the Lease, the Management Agreement, the Management Agreement Amendment, the Note and the Mortgage. In the event of any such assignment and upon written notice to the Borrower, the Manager and the Lessee, the Lender's assignee shall, to the extent of such assignment, be entitled to the benefits of, and to receive and enforce performance of, all of the covenants and agreements to be performed (i) by the Borrower under the Mortgage and the Note as though the Lender's assignee were named therein as the Lender, (ii) by the Manager under the Management Agreement, as amended by the Management Agreement Amendment, as though the Lender's assignee were named therein as "Owner" and (iii) by the Lessee under the Lease, as though the Lender's assignee were named therein as either "RRI", "C&H" or the "Manager"; and be subject to all of the duties and obligations of the Lender hereunder.

**SECTION 15. Costs and Expenses.**

The Guarantors shall pay all costs and expenses (including, without limitation, attorneys' fees and expenses) reasonably incurred by or on behalf of the Lender in enforcing the obligations of the Guarantors under this Guaranty and Agreement.

**SECTION 16. Security Deposit.**

Rex-Noreco and the Manager hereby acknowledges that Rex-Noreco and/or the Manager have paid to the Lender, on behalf of the Borrower, a non-refundable security deposit in the amount of \$26,000. The Lender shall retain \$5,000 of such deposit as a non-refundable commitment fee, which amount shall not be applied to or reduce the obligations of the Borrower under any Section of the Mortgage. If the Closing Date is a date after October 16, 1979, the Lender shall retain an additional \$10,000 of such deposit as a non-refundable commitment fee, which additional amount shall not be applied to or reduce the obligations of the Borrower under any Section of the Mortgage. In the event the Lender makes the Loan to the Borrower pursuant to the Mortgage, the portion of such deposit not retained pursuant to the second and third sentences of this Section shall be applied by the Lender, on behalf of the Borrower, to the first installment of the repayment of the Loan. In the event the Lender does not make the Loan to the Borrower, the portion of such deposit not retained pursuant to the second and third

sentences of this Section shall be retained by the Lender as liquidated damages for its costs and expenses (exclusive of legal fees which Rex-Noreco and the Manager have guaranteed to pay) in connection with the negotiation of the transactions contemplated hereby.

**SECTION 17. Termination of Agreements.** Rex-Noreco and the Manager, severally and not jointly, hereby acknowledge that upon the prepayment by the Borrower to Provident of the Conditional Sale Indebtedness and the payment to Provident of the amounts set forth in subparagraph (10) of paragraph (a) of Section 12 of the Mortgage, the Conditional Sale Agreement, the Finance Agreement, dated as of February 13, 1979, among Provident, the Vendor, the Manager, Skiva and Rex-Noreco, the Guaranty and Agreement, dated as of February 13, 1979, between Provident and Rex-Noreco, the Lease Agreement Assignment and the Management Agreement Assignment shall be terminated without further act of any party and shall be of no further force and effect.

**SECTION 18. Amendments.** The terms of this Guaranty and Agreement may not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever except by written instrument signed by each of the parties hereto, or their successors and assigns.

**SECTION 19. Successors and Assigns.** This Guaranty and Agreement shall be binding upon the parties hereto and inure to the benefit of such parties and, to the extent permitted hereby, their respective successors and assigns. The Lender, or any assignee of the Lender may assign its right, title and interest in, to and under this Guaranty and Agreement without the consent of either of the Guarantors. No assignment of this Guaranty and Agreement shall increase the obligations of the Guarantors hereunder, and the Guarantors shall be under no obligation to any assignee except upon written notice of such assignment. The rights and obligations of each Guarantor hereunder shall not be assignable except pursuant to the provisions of Section 6 hereof.

**SECTION 20. Survival of Agreements.** All agreements, representations and warranties of each Guarantor contained herein or made in writing by either of the Guarantors in connection with the transactions contemplated hereby shall survive the execution and delivery of this Guaranty and Agreement and shall continue in effect as long as any obligations of the Borrower under the Mortgage are unpaid and outstanding.

**SECTION 21. Notices.** Any notice required or permitted to be given by either party hereunder shall be deemed to have been given when deposited in the United States mail, first-class postage prepaid, and addressed (a) if to the Manager or to Rex-Noreco, to 616 Palisade Avenue, Englewood Cliffs, New Jersey 07632 and (b) if to the Lender, to 399 Park Avenue, New York, New York 10043, Attention: Manager, Contract Administration, or to such other address as each such party shall hereafter furnish to the other party in writing.

**SECTION 22. Choice of Forum.** The Manager, Rex-Noreco and the Lender each, to the fullest extent permitted by law, (a) designates the United States District Court for the Southern District of New York, as a forum where any and all matters pertaining to this Guaranty and Agreement may be adjudicated, and (b) by the foregoing designation, consents to the jurisdiction and venue of such Court for the purpose of adjudicating any and all matters pertaining to this Guaranty and Agreement. Each party hereto not having an agent for service of process of record with the Secretary of State of the State of New York hereby irrevocably appoints the Secretary of State of the State of New York as the agent for service of process in any proceeding instituted hereunder and each party hereto agrees that service of process upon such agent, in accordance with the then-prevailing and applicable law as hereinabove agreed to, with a copy of such summons or other instrument mailed to such party by United States registered mail at the address specified in Section 21 hereof, shall, upon receipt by such party, constitute proper service on such party for all purposes without objections of any kind whatsoever. Notwithstanding the provisions of this paragraph, any party hereto shall also be entitled to institute legal proceedings to adjudicate matters pertaining to this Guaranty and Agreement against the other in any other competent court.

**SECTION 23. Miscellaneous.**

(a) **Execution.** This Guaranty and Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, all of which, when so executed and delivered, shall constitute a single instrument, but the counterpart or counterpart set, which shall be marked "Original", delivered to the Interstate Commerce Commission for recordation and subsequently redelivered to the Lender shall be deemed the original counterpart and all other counterparts hereof shall be deemed duplicates thereof and shall be marked "Duplicate". Although this Guaranty and Agreement is dated as of the date first above written for convenience, the actual dates of the execution hereof by the parties hereto are respectively the dates set forth under the signatures hereto.

(b) **Governing Law.** This Guaranty and Agreement shall be construed in accordance with and governed by the laws of the State of New York; **provided, however,** that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303, such additional rights

arising out of the filing, recording, registering, or depositing of this Guaranty and Agreement and any rights arising out of the marking on the Units of Equipment, as such terms are defined in the Conditional Sale Agreement.

(c) **Headings.** The headings in this Guaranty and Agreement are for the purpose of reference only and shall not limit or define the provisions hereof.

**IN WITNESS WHEREOF,** the parties hereto have caused this Guaranty and Agreement to be executed by their respective duly authorized officers on the respective dates set forth below.

**REX RAILWAYS, INC.,**  
as Manager and a Guarantor

By \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

[Seal]

**REX-NORECO, INC.,**  
as a Guarantor

By \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

[Seal]

CITICORP INDUSTRIAL CREDIT, INC.

By \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

[Seal]

State of New Jersey     )  
                                  ss.:  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of September, 1979, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of Rex Railways, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

---

Notary Public

[Notarial Seal]

State of New Jersey     )  
                                  ss.:  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of September, 1979, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of Rex-Noreco, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

---

Notary Public

[Notarial Seal]

State of New York            )  
                                  ss.:  
County of \_\_\_\_\_  )

On this \_\_\_\_\_ day of October, 1979, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of Citicorp Industrial Credit, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]



Exhibit C  
to Mortgage

---

RELEASE AND AGREEMENT

Dated as of October 1, 1979

between

TWITTER, INC.

and

CITICORP INDUSTRIAL CREDIT, INC.

---

(COVERING 100 GENERAL PURPOSE BOXCARS)

## RELEASE AND AGREEMENT

This **RELEASE AND AGREEMENT** dated as of October 1, 1979 between **TWITTER, INC.** (the Vendor) and **CITICORP INDUSTRIAL CREDIT, INC.** (the Lender).

### W I T N E S S E T H :

**WHEREAS**, the Vendor, **Rex Railways, Inc.** (the **Manager**), and, through an Assignment dated March 15, 1979 from **Skiva International, Inc.** (**Skiva**), **C&H Railways, Ltd.** (the **Borrower**) are parties to a Conditional Sale Agreement dated as of February 13, 1979 as amended by Amendment Agreement #1 dated as of February 13, 1979 (as so amended, the **Conditional Sale Agreement**), concerning the railroad equipment described in Annex A thereto (the **Equipment**);

**WHEREAS**, the Vendor has assigned substantially all of its right, title and interest in, to and under the Conditional Sale Agreement and other agreements to **The Provident Bank** (**Provident**) pursuant to an Agreement and Assignment dated as of February 13, 1979 (the **Agreement and Assignment**) in connection with the financing by **Provident** of a portion of the purchase price of the **Equipment** pursuant to a Finance Agreement dated as of February 13, 1979 (the **Finance Agreement**), among **Provident**, the Vendor, the **Manager**, **Skiva** and **Rex-Noreco, Inc.**;

**WHEREAS**, the **Borrower** desires to prepay the Conditional Sale Indebtedness, as defined in the Conditional Sale Agreement (the **Conditional Sale Indebtedness**) and all other amounts owing under the Conditional Sale Agreement;

**WHEREAS**, the Lender has agreed, pursuant to a Mortgage dated as of October 1, 1979 (the **Mortgage**, and all terms used herein shall have the respective meanings assigned to them in the Mortgage, unless otherwise defined herein) between the Lender and the **Borrower**, to make a loan to the **Borrower** (the **Loan**) to finance the prepayment of the Conditional Sale Indebtedness upon the condition, among others, that the Vendor execute and deliver this Release and Agreement; and

**WHEREAS**, the Vendor desires to have the Lender make the Loan to the **Borrower** pursuant to the Mortgage.

**NOW, THEREFORE**, in consideration of the agreements of the Lender under the Mortgage and the premises hereof and thereof and other good and valuable consideration, the parties hereto agree as follows:

### **SECTION 1. Consent to Mortgage.**

The Vendor hereby consents to the terms and provisions of the Mortgage and to the transactions contemplated thereby including, but not limited to, prepayment of the Conditional Sale Indebtedness by the Borrower, the making of the Loan by the Lender to the Borrower and the mortgage of, and grant of a security interest in, the Collateral by the Borrower to the Lender.

### **SECTION 2. Release.**

The Vendor hereby agrees that on the Closing Date any and all of the right, title and interest of the Vendor in, to and under the Conditional Sale Agreement shall vest in the Borrower. The Vendor hereby forever releases, relinquishes and quitclaims unto the Borrower and its successors and assigns any and all of the right, title and interest of the Vendor in, to and under the Conditional Sale Agreement, including, but not limited to, any and all of the right, title and interest of the Vendor in and to the Equipment and all proceeds thereof. The Vendor agrees that the Conditional Sale Agreement and the Agreement and Assignment are each hereby terminated on and as of the Closing Date and that on and as of the Closing Date the Conditional Sale Agreement and the Agreement and Assignment shall each be of no further force and effect and any party to each such agreement shall have no further liability to any other party thereto. The Vendor hereby represents and warrants that any and all of the right, title and interest of the Vendor which is released, relinquished or quitclaimed unto the Borrower pursuant hereto is free and clear of all claims, liens, security interests and other encumbrances arising by act of the Vendor or by, through or under the Vendor.

### **SECTION 3. Agreement of the Vendor.**

The Vendor hereby agrees that on the Closing Date, the Vendor shall deliver to Lender an opinion of counsel, dated the Closing Date, to the effect set forth in paragraphs (a) through (f) of Section 4 of this Release and Agreement, which opinion may be subject to the qualifications set forth in paragraph (b) of Section 12 of the Mortgage.

### **SECTION 4. Representations and Warranties of the Vendor.**

The Vendor represents and warrants that:

(a) **Due Organization.** It is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware and has the corporate power and authority to enter into and perform its obligations under this Release and Agreement.

(b) **Due Authorization and Enforceability.** This Release and Agreement has been duly authorized, executed and delivered by the Vendor and, assuming due authorization, execution and delivery by the other party hereto, is a legal, valid and binding obligation of the Vendor, enforceable in accordance with its terms.

(c) **No Violation.** The execution and delivery by the Vendor of this Release and Agreement is not, and the performance by it of its obligations under this Release and Agreement will not be, inconsistent with its charter or by-laws, do not and will not contravene any law, governmental rule or regulation, judgment or order applicable to it and do not and will not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which it is a party or by which it is bound or require the consent or approval of, the giving of notice to, the registration with or the taking of any action in respect of or by, the Interstate Commerce Commission or any other Federal, state, local or Canadian governmental authority or agency, except such as have been obtained, given or accomplished.

(d) **Title to the Equipment.** On the Closing Date, each Unit of Equipment will be free of all claims, liens, security interests and other encumbrances (**Liens**) arising by, through or under the Vendor other than the rights of the Lender under the Mortgage, the Note and the Guaranty, the rights of the Manager under the Management Agreement and the rights of the Lessee under the Lease.

(e) **Performance Will Not Create Liens.** The performance by it of its obligations under this Release and Agreement will not subject the Collateral, including, without limitation, the Equipment, the Lease and the Management Agreement, to any Lien (other than the Liens provided in the Mortgage) under any indenture, mortgage, contract or other instrument to which it is a party or by which it is bound.

(f) **No Litigation.** There are no actions, suits, proceedings or investigations pending, or to the knowledge of the Vendor, threatened, before any court, regulatory commission, board or other governmental authority which question the validity of this Release and Agreement or which might affect the ability of the Vendor to perform its obligations hereunder, or which might result, either individually or in the aggregate, in a material adverse change in the business, operations, affairs or condition of the Vendor, except as previously disclosed in writing to the Lender.

**SECTION 5. Survival of Representations and Warranties; Binding Effect.**

(a) **Survival.** All agreements, representations and warranties contained in this Release and Agreement, the documents referred to herein and any document or certificate delivered pursuant hereto or thereto or in connection herewith or therewith shall continue in effect following the execution and delivery of this Release and Agreement and shall continue in effect so long as any amount owing under the terms of the Mortgage remains outstanding and unpaid.

(b) **Binding Effect.** All agreements, representations and warranties contained in this Release and Agreement, the documents referred to herein and any document or certificate delivered pursuant hereto or thereto or in connection herewith or therewith or from time to time thereafter shall bind the party making the same and its successors and assigns and shall inure to the benefit of each party for whom made and their respective successors and assigns.

**SECTION 6. Notices.**

All communications and notices with respect to the transactions contemplated by this Consent and Agreement shall become effective when deposited in the United States Mail, with proper postage for first-class mail, prepaid, addressed (a) if to the Lender, to 399 Park Avenue, New York, New York 10043, Attention: Manager, Contracts Administration; and (b) if to the Vendor, to Rex Railways, Inc., 616 Palisade Avenue, Englewood Cliffs, New Jersey 07632; or at such other address as any party hereto may from time to time designate by notice duly given in accordance with the provisions of this Section to the other party hereto.

**SECTION 7. Miscellaneous.**

(a) **Execution.** This Release and Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, all of which, when so executed and delivered, shall constitute a single instrument, but the counterpart or counterpart set delivered to the Interstate Commerce Commission for recordation and subsequently redelivered to the Lender shall be deemed the original counterpart and all other counterparts hereof shall be deemed duplicates thereof. Although this Release and Agreement is dated as of the date first above written for convenience, the actual dates of the execution hereof by the parties hereto are respectively the dates set forth under the signatures hereto.

(b) **Governing Law.** This Release and Agreement shall be governed by, and be construed in accordance with, the laws of the State of New York, **provided, however,** that the parties shall be entitled to all rights conferred by 49 U.S.C. s 11303, such additional rights arising out of the filing, recording, registering,

or depositing of this Release and Agreement and any rights arising out of the marking on the Units of Equipment.

(c) **Amendments, Supplements, etc.** Neither this Release and Agreement nor any of the terms hereof may be amended, supplemented, waived or modified (herein referred to as a **change**) orally, but only by an instrument in writing signed by the party against which enforcement of such change is sought.

(d) **Headings.** The headings of the sections and paragraphs of this Release and Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions hereof.

**IN WITNESS WHEREOF**, the parties hereto have caused this Release and Agreement to be duly executed by their respective officers thereunto duly authorized as of the date set forth above.

**CITICORP INDUSTRIAL CREDIT,  
INC.**

By \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

[Seal]

**TWITTER, INC.**

By \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

[Seal]

State of New York           )  
                                  ss.:  
County of New York        )

On this \_\_\_\_\_ day of October, 1979, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of Citicorp Industrial Credit, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

State of New York           )  
                                  ss.:  
County of \_\_\_\_\_        )

On this \_\_\_\_\_ day of October, 1979, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of Twitter, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

Exhibit D  
to Mortgage

---

CONSENT AND AGREEMENT

Dated as of October 1, 1979

between

LENAWEE COUNTY RAILROAD COMPANY, INC.

and

CITICORP INDUSTRIAL CREDIT, INC.

---

(COVERING 100 GENERAL PURPOSE BOXCARS)



## CONSENT AND AGREEMENT

This **CONSENT AND AGREEMENT** dated as of October 1, 1979 between **LENAAWEE COUNTY RAILROAD COMPANY, INC.** (the **Lessee**) and **CITICORP INDUSTRIAL CREDIT, INC.** (the **Lender**).

### W I T N E S S E T H :

**WHEREAS**, the Lessee is the lessee under a Lease Agreement made as of September 23, 1977 between the Lessee and Rex Railways, Inc., as lessor (the **Manager**), which Lease Agreement has been supplemented by an Equipment Schedule and a First Amendment and Second Amendment thereto (such Lease Agreement, as so supplemented and amended is herein referred to as the **Lease**);

**WHEREAS**, the Manager is acting as the agent for C&H Railways, Ltd. (the **Borrower**) pursuant to a Management Agreement dated as of February 13, 1979 (the **Management Agreement**) between the Manager and, through assignment from Skiva International, Inc. (**Skiva**), the Borrower;

**WHEREAS**, Skiva has assigned its right, title and interest in, to and under the Management Agreement and the Lease to The Provident Bank (**Provident**);

**WHEREAS**, the Borrower desires to prepay the Conditional Sale Indebtedness, as defined in the Conditional Sale Agreement (the **Conditional Sale Indebtedness**), among Twitter, Inc., the Manager and, through assignment from Skiva, the Borrower, dated as of February 13, 1979 and amended by Amendment Agreement #1 dated as of February 13, 1979;

**WHEREAS**, the Lender has agreed, pursuant to a Mortgage dated as of October 1, 1979 (the **Mortgage**, and all terms used herein shall have the respective meanings assigned to them in the Mortgage, unless otherwise defined herein) between the Lender and the Borrower, to make a secured loan to the Borrower (the **Loan**) to finance the prepayment of the Conditional Sale Indebtedness upon the condition, among others, that the Lessee execute and deliver this Consent and Agreement; and

**WHEREAS**, the Lessee desires to have the Lender make the Loan to the Borrower pursuant to the Mortgage.

**NOW, THEREFORE**, in consideration of the agreements of the Lender under the Mortgage and the premises hereof and thereof and other good and valuable consideration, the parties hereto agree as follows:

## **SECTION 1. Consent to Mortgage**

The Lessee hereby consents to the terms and provisions of the Mortgage and Section 7 of the Guaranty, including, but not limited to, the prepayment of the Conditional Sale Indebtedness by the Borrower, the making of the Loan by the Lender to the Borrower, the mortgage of, and grant of a security interest in, the Collateral by the Borrower to the Lender, the assignment by the Borrower to the Lender of the Lease and the Management Agreement and all of the Borrower's rights, powers and remedies under the Lease and Management Agreement, respectively, and the assignment by the Manager to the Lender, as security, of all of the Manager's right, title and interest in and to the Lease.

## **SECTION 2. Agreements of the Lessee.**

The Lessee hereby agrees that:

(a) **Entitlement to Benefits.** The Lender, by virtue of the Mortgage, shall, to the extent set forth in Section 3 of the Mortgage, be entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by the Lessee under the Lease as though the Lender were named therein as either "RRI", "C&H" or the "Manager".

(b) **No Liability.** The Lender shall not, by virtue of this Consent and Agreement or the Mortgage, including, without limitation, the assignment by the Borrower to the Lender of the Lease and Management Agreement and all of the Borrower's rights, powers, privileges and remedies under the Lease and Management Agreement, respectively, be or become subject to any liability or obligation under the Lease or otherwise.

(c) **Modification of the Lease.** The Lease shall not, without the prior written consent of the Lender, be terminated, modified or amended, nor shall any action be taken or omitted by the Lessee, the taking or omission of which might result in any alteration or impairment of the Lease or the Mortgage, or any of the rights created thereunder.

(d) **Compliance.** The Lessee shall comply with all of the terms and conditions of the Mortgage which relate to the maintenance or use of the Equipment.

(e) **Payment to Lender.** The Lessee shall pay all amounts due and payable under the terms of the Lease, including, without limitation, rental charges pursuant to Section 6 thereof, directly to the Lender at the address set forth in Section 28 of the Mortgage, without deduction, set-off, reduction, abatement, counterclaim or recoupment whatsoever for amounts due other persons or corporations or any reason whatsoever. The Lessee covenants that each payment made by the Lessee pursuant to this paragraph (e)

shall be accompanied by notice identifying the party making such payment or on behalf of which such payment is being made. The provisions of this paragraph (e) shall not prevent the Lessee from asserting any claims separately against the Borrower. The Lender shall apply such amounts pursuant to the provisions of Section 28 of the Mortgage.

(f) **Information.** The Lessee shall provide to the Lender such certificates, statements or other information as the Lender may reasonably request, including, without limitation, copies of all information and reports provided to the Borrower or the Manager under the Lease.

(g) **Financial Information.** The Lessee shall furnish the Lender:

(i) within 90 days after the close of each fiscal year of the Lessee, a balance sheet and statement of income of the Lessee as at the end of such year, setting forth in each case the comparable figures for the previous fiscal year, accompanied by an opinion of independent certified public accountants, which opinion shall state that such financial statements have been prepared in accordance with generally accepted accounting principles consistently applied, that the examination by such accountants has been made in accordance with generally accepted auditing standards and that such accountants have obtained no knowledge of the occurrence of any default under the Lease; **provided, however,** that if the Lessee does not in any year receive or obtain financial statements certified by independent certified public accountants, such financial statements shall be certified by the chief financial officer of the Lessee as complete and correct;

(ii) within each of the periods set forth in (i) above, a certificate of an authorized officer of the Lessee stating that he has reviewed the activities of the Lessee and, to the best of his knowledge, there is no condition or event which constitutes, or which after notice or lapse of time or both would constitute, an event of default, as defined in the Lease, or, if such condition or event has occurred or is continuing, specifying the nature and period of continuance thereof, and the actions which the Lessee has taken or proposes to take with respect thereto;

(iii) upon the occurrence of any event of default under the Lease, a certificate of an authorized officer of the Lessee stating that such an event of default has occurred, the

nature and period of continuance thereof, and the actions which the Lessee has taken or proposes to take with respect thereto; and

(iv) with reasonable promptness, any other information which the Lender shall reasonably request.

(h) **Assignment by Lender.** The Lender may assign, without the consent of the Lessee, any or all of its rights under the Lease, the Management Agreement, the Note and the Mortgage. In the event of any such assignment and upon written notice to the Lessee, the Lender's assignee shall, to the extent of such assignment, be entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by the Lessee under the Lease as though the Lender's assignee were named therein as "RRI", "C&H" or the "Manager".

(i) **Opinion of Counsel.** On the Closing Date the Lessee shall deliver to the Lender an opinion of counsel, dated the Closing Date, to the effect set forth in paragraphs (a) through (f) of Section 3 of this Consent and Agreement, which opinion may be subject to the qualifications set forth in paragraph (b) of Section 12 of the Mortgage.

### **SECTION 3. Representations and Warranties of the Lessee.**

The Lessee represents and warrants that:

(a) **Due Organization.** It is a corporation duly organized and validly existing under the laws of the State of Michigan and had the corporate power and authority to enter into the Lease Agreement and the Equipment Schedule at the time it entered into each of such agreements and has the corporate power and authority to enter into this Consent and Agreement and perform its obligations under the Lease and this Consent and Agreement.

(b) **Due Authorization and Enforceability.** This Consent and Agreement, the Lease Agreement and the Equipment Schedule have been duly authorized, executed and delivered by the Lessee, and assuming due authorization, execution and delivery by the other parties thereto, these agreements as well as the Lease are legal, valid and binding obligations of the Lessee, enforceable in accordance with their respective terms.

(c) **No Violation.** The execution and delivery by the Lessee of this Consent and Agreement, the Lease

Agreement and the Equipment Schedule are not, and the performance by it of its obligations under these agreements as well as under the Lease will not be inconsistent with its charter or by-laws, do not and will not contravene any law, governmental rule or regulation, judgment or order applicable to it and do not and will not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which it is a party or by which it is bound or require the consent or approval of, the giving of notice to, the registration with or the taking of any action in respect of or by, the Interstate Commerce Commission or any other Federal, state, local or Canadian governmental authority or agency, except such as have been obtained, given or accomplished.

(d) **Title to the Equipment.** On the Closing Date, each Unit of Equipment will be free and clear of all claims, liens, security interests and other encumbrances (**Liens**) of any nature arising by, through or under the Lessee other than the rights of the Lender under the Mortgage, the Note and the Guaranty, the rights of the Manager under the Management Agreement and the rights of the Lessee under the Lease.

(e) **Performance Will Not Create Liens.** The performance by it of its obligations under this Consent and Agreement and the Lease will not subject the Collateral, including, without limitation, the Equipment, the Lease and the Management Agreement, to any Lien (other than the Liens provided in the Mortgage) under any indenture, mortgage, contract or other instrument to which it is a party or by which it is bound.

(f) **No Litigation.** There are no actions, suits, proceedings or investigations pending, or to the knowledge of the Lessee, threatened, before any court, regulatory commission, board or other governmental authority which question the validity of this Consent and Agreement or the Lease or which might affect the ability of the Lessee to perform its obligations hereunder or thereunder, or which might result, either individually or in the aggregate, in a material adverse change in the business, operations, affairs or condition of the Lessee, except as previously disclosed in writing to the Lender.

(g) **Full Disclosure.** There is no fact known to the Lessee which materially adversely affects or in the future may (so far as the Lessee can now foresee) materially adversely affect the business, operations, earnings, affairs, prospects or condition of the Lessee or any of its properties or assets which has not been disclosed herein or

in the other documents, certificates and statements furnished to the Lender specifically for use in connection with the transactions contemplated hereby and by the Mortgage.

(h) **Status of Equipment.** The 100 boxcars described in and bearing the identification numbers set forth in Annex 1 to the Mortgage are subject to the Lease and all of terms and provisions thereof.

(i) **Compliance with Lease.** The Lessee has complied with all terms and provisions of the Lease and has performed all obligations and taken all actions required to be performed or taken by it under the Lease.

#### **SECTION 4. Survival of Representations and Warranties; Binding Effect.**

(a) **Survival.** All agreements, representations and warranties contained in this Consent and Agreement, the documents referred to herein and any document or certificate delivered pursuant hereto or thereto or in connection herewith or therewith shall continue in effect following the execution and delivery of this Consent and Agreement and shall continue in effect so long as any amount owing under the terms of the Mortgage remains outstanding and unpaid.

(b) **Binding Effect.** All agreements, representations and warranties contained in this Consent and Agreement, the documents referred to herein and any document or certificate delivered pursuant hereto or thereto or in connection herewith or therewith or from time to time thereafter shall bind the party making the same and its successors and assigns and shall inure to the benefit of each party for whom made and their respective successors and assigns.

#### **SECTION 5. Notices.**

All communications and notices with respect to the transactions contemplated by this Consent and Agreement shall become effective when deposited in the United States mail, with proper postage for first-class mail, prepaid, addressed (a) if to the Lender, to 399 Park Avenue, New York, New York 10043, Attention: Manager, Contracts Administration; and (b) if to the Lessee, to 708 East Michigan Street, Adrian, Michigan 49221 with a copy to the Manager, to 616 Palisade Avenue, Englewood Cliffs, New Jersey 07632; or at such other address as any party hereto may from time to time designate by notice duly given in accordance with the provisions of this Section to the other party hereto.

## SECTION 6. Miscellaneous.

(a) **Execution.** This Consent and Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, all of which, when so executed and delivered, shall constitute a single instrument, but the counterpart or counterpart set delivered to the Interstate Commerce Commission for recordation and subsequently redelivered to the Lender shall be deemed the original counterpart and all other counterparts hereof shall be deemed duplicates thereof. Although this Consent and Agreement is dated as of the date first above written for convenience, the actual dates of the execution hereof by the parties hereto are respectively the dates set forth under the signatures hereto.

(b) **Governing Law.** This Consent and Agreement shall be governed by, and be construed in accordance with, the laws of the State of New York, **provided, however,** that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303, such additional rights arising out of the filing, recording, registering, or depositing hereof and any rights arising out of the marking on the Units of Equipment.

(c) **Amendments, Supplements, etc.** Neither this Consent and Agreement nor any of the terms hereof may be amended, supplemented, waived or modified (herein referred to as a **change**) orally, but only by an instrument in writing signed by the party against which enforcement of such change is sought.

(d) **Headings.** The headings of the sections and paragraphs of this Consent and Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Consent and Agreement to be duly executed by their respective officers thereunto duly authorized as of the date set forth above.

CITICORP INDUSTRIAL CREDIT, INC.

By \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

[Seal]

LENAWEE COUNTY RAILROAD COMPANY,  
INC.

By \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

[Seal]



State of New York        )  
                              ss.:  
County of New York        )

On this \_\_\_\_\_ day of October, 1979, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of Citicorp Industrial Credit, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

State of \_\_\_\_\_ )  
                              ss.:  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of October, 1979, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of Lenawee County Railroad Company, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

Exhibit E  
to Mortgage

---

CONSENT AND AGREEMENT

Dated as of October 1, 1979

between

SKIVA INTERNATIONAL, INC.

and

CITICORP INDUSTRIAL CREDIT, INC.

---

(COVERING 100 GENERAL PURPOSE BOXCARS)

## CONSENT AND AGREEMENT

This **CONSENT AND AGREEMENT** dated as of October 1, 1979 between **SKIVA INTERNATIONAL, INC. (Skiva)** and **CITICORP INDUSTRIAL CREDIT, INC. (the Lender)**.

### W I T N E S S E T H :

**WHEREAS**, Skiva, as vendee, entered into a Conditional Sale Agreement, dated as of February 13, 1979, among Skiva, Twitter, Inc. (the **Vendor**) and Rex Railways, Inc. (the **Manager**), which Agreement was amended by Amendment Agreement #1 dated as of February 13, 1979 (as so amended, the **Conditional Sale Agreement**), concerning the sale of the railroad equipment described in Annex A to such Conditional Sale Agreement (the **Equipment**);

**WHEREAS**, the Manager and Skiva have entered into a Management Agreement dated as of February 13, 1979 (the **Management Agreement**);

**WHEREAS**, the Manager has entered into an Equipment Schedule (the **Equipment Schedule**) which amends the Lease Agreement dated September 23, 1977 (the **Lease Agreement**) between the Manager and the Lenawee County Railroad Company, Inc. (the **Lessee**), which Lease Agreement provides that the Manager enter into the Equipment Schedule as principal or agent for parties to be named in an amendment to be delivered in accordance with the provisions of the Lease Agreement;

**WHEREAS**, the Manager and Skiva delivered to the Lessee a First Amendment to Equipment Schedule (the **First Amendment**) identifying Skiva as the principal for whom the Manager acts and who owns the Equipment, and subsequent to the assignment by Skiva of its interest in the Conditional Sale Agreement, the Lease Agreement, as amended by the Equipment Schedule and the First Amendment, and the Management Agreement to C&H Railways, Ltd. (the **Vendee**) pursuant to an Assignment dated March 15, 1979 (the **Assignment**), the Manager and the Vendee delivered to the Lessee a Second Amendment to Equipment Schedule (the **Second Amendment**) identifying the Vendee as the principal for whom the Manager acts and who owns the Equipment (the Lease Agreement, the Equipment Schedule, the First Amendment and the Second Amendment constituting the **Lease**);

**WHEREAS**, the Vendor has assigned substantially all of its right, title and interest in and to the Conditional Sale Agreement to The Provident Bank (**Provident**) pursuant to an Agreement and Assignment dated as of February 13, 1979;

**WHEREAS**, the Vendee desires to prepay the Conditional Sale Indebtedness, as defined in the Conditional Sale Agreement (the **Conditional Sale Indebtedness**) and the Lender has agreed, pursuant to a Mortgage dated as of October 1, 1979 between the Lender and the Borrower (the **Mortgage**, and all terms used herein shall have the

respective meanings assigned to them in the Mortgage, unless otherwise defined herein), to make a secured loan to the Vendee to finance such prepayment upon the condition, among others, that Skiva execute and deliver this Consent and Agreement;

**WHEREAS**, the Vendee and the Manager are entering into a Management Agreement Amendment dated as of October 1, 1979 (the **Management Agreement Amendment**); and

**WHEREAS**, Skiva desires to have the Lender make such loan pursuant to the terms of the Mortgage.

**NOW, THEREFORE**, in consideration of the agreements of the Lender under the Mortgage and the premises hereof and thereof and other good and valuable consideration, the parties hereto agree as follows:

**SECTION 1. Consent to Mortgage.**

(a) Skiva hereby consents, notwithstanding any provisions of the Conditional Sale Agreement, the Finance Agreement, the Management Agreement Assignment and the Lease Agreement Assignment which may be to the contrary, to the terms and provisions of the Mortgage and to the transactions contemplated thereby, including, but not limited to, the prepayment by the Vendee of the Conditional Sale Indebtedness and the assignment by the Vendee to the Lender, as security, of all of the right, title and interest of the Vendee in, to and under the Equipment, and the payments due or to become due under the Lease or the Management Agreement.

(b) Skiva hereby agrees that, notwithstanding the terms and provisions of Section 4 of the Lease Agreement Assignment and Section 4 of the Management Agreement Assignment, to the extent such agreements remain effective, the obligations of Skiva, as assigned to the Vendee, under the Lease Agreement and Management Agreement may be performed by the Lender without releasing the Vendee, as assignee of Skiva, therefrom.

**SECTION 2. Agreements of Skiva.** Skiva hereby agrees that:

(a) **Assignment by Lender.** The Lender may assign, without the consent of Skiva, any or all of its rights under the Lease, the Management Agreement, the Note, the Mortgage and the other documents referred to therein.

(b) **Opinion of Counsel.** On the Closing Date Skiva shall deliver to the Lender an opinion of counsel, dated the Closing Date, to the effect set forth in paragraphs (a) through (f) of Section 3 of this Consent and Agreement and to the further effect that assuming due

authorization, execution and delivery by the Vendee of the Assignment and due authorization by the Vendee to act thereunder, the Vendee has been vested with all of the right, title, interest, powers, privileges and remedies purported to be assigned by the Assignment, which opinion may be subject to the qualifications set forth in paragraph (b) of Section 12 of the Mortgage.

**SECTION 3. Representations and Warranties of Skiva.**  
Skiva represents and warrants that:

(a) **Due Organization.** It is a corporation duly organized and validly existing in good standing under the laws of the State of New York and has the corporate power and authority to enter into and perform its obligations under this Consent and Agreement and, at the respective times of execution of the Assignment, the Lease and the Management Agreement, was a corporation duly organized and validly existing in good standing under the laws of the State of New York and had the corporate power and authority to enter into such agreements and at all times at which it had obligations under such agreements had the corporate power and authority to perform such obligations.

(b) **Due Authorization.** This Consent and Agreement and the Assignment have been duly authorized, executed and delivered by Skiva and, assuming due authorization, execution and delivery by the other parties thereto, are legal, valid and binding obligations of Skiva, enforceable in accordance with their respective terms. The First Amendment and the Management Agreement have been duly authorized, executed and delivered by Skiva and, assuming due authorization, execution and delivery by the other parties thereto, these agreements as well as the Lease Agreement, as amended by the Equipment Schedule and the First Amendment, were legal, valid and binding obligations of Skiva, enforceable in accordance with their respective terms prior to the effectiveness of the Assignment. Under the Assignment, Skiva assigned all of its rights and delegated all of its duties and obligations in, to and under the Equipment, the Lease and the Management Agreement to the Vendee and the Vendee assumed all of the duties and obligations of Skiva thereunder.

(c) **No Violation.** The execution and delivery by it of this Consent and Agreement is not, and the execution and delivery by it of the Assignment was not, and the performance by it of its obligations under this Consent and Agreement and the Assignment will not be, inconsistent with its charter or by-laws, do not and will not contravene any law, governmental rule or regulation, judgment or order

applicable to it and do not and will not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which it is a party or by which it is bound or require the consent of, the giving of notice to, the registration with or the taking of any action in respect of or by, the Interstate Commerce Commission or any other Federal, state, local or Canadian governmental authority or agency, except such as have been obtained, given or accomplished. The execution and delivery by it of the First Amendment and the Management Agreement were not, and the performance by it of its obligations under these agreements as well as under the Lease Agreement, as amended by the Equipment Schedule and the First Amendment, was not, at any time at which it had such obligations, inconsistent with its charter or by-laws, did not contravene any law, governmental rule or regulation, judgment or order applicable to it and did not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which it was a party or by which it was bound at the time of such performance or require the consent of, the giving of notice to, the registration with or the taking of any action in respect of or by, the Interstate Commerce Commission or any other federal, state, local or Canadian governmental authority or agency, except such as were obtained, given or accomplished.

(d) **Title to the Equipment.** On the Closing Date, each Unit of Equipment, the Lease and the Management Agreement will be free and clear of all claims, liens, security interests and other encumbrances (Liens) of any nature arising by, through or under Skiva other than the rights of the Manager under the Management Agreement, the rights of the Lessee under the Lease, and the rights of the Lender under the Mortgage, the Note and the Guaranty.

(e) **Performance Does Not Create Liens.** The performance by it of its obligations under this Consent and Agreement and the Assignment will not subject the Collateral, including, without limitation, the Equipment, the Lease and the Management Agreement, to any Lien (other than the Liens provided in the the Mortgage, the Note and the Guaranty) under any indenture, mortgage, contract or other instrument to which it is a party or by which it is bound. The performance by it of its obligations under the Assignment, the Lease Agreement, as amended by the Equipment Schedule and the First Amendment, and the Management Agreement did not, at any time at which it had such obligations, subject the Collateral, including, without limitation, the Equipment, the Lease, and the Management Agreement, to any Lien (other than the Liens

provided in the Conditional Sale Agreement, the Lease Agreement Assignment, the Management Agreement Assignment and the Agreement and Assignment) under any indenture, mortgage, contract or other instrument to which it was a party or by which it was bound at the time of such performance.

(f) **No Litigation.** There are no actions, suits, proceedings or investigations pending, or to the knowledge of Skiva, threatened, before any court, regulatory commission, board or other governmental authority which question the validity of this Consent and Agreement or the Assignment or which might affect the ability of Skiva to perform its obligations hereunder or thereunder. There were at all times at which Skiva had obligations under the Lease and Management Agreement no actions, suits, proceedings or investigations pending, or to the knowledge of Skiva, threatened, before any court, regulatory commission, board or other governmental authority which questioned the validity of the Lease or the Management Agreement or which might have affected the ability of Skiva to perform its obligations thereunder.

#### **SECTION 4. Survival of Representations and Warranties; Binding Effect.**

(a) **Survival.** All agreements, representations and warranties contained in this Consent and Agreement, the documents referred to herein and any document or certificate delivered pursuant hereto or thereto or in connection herewith or therewith shall continue in effect following the execution and delivery of this Consent and Agreement and shall continue in effect so long as any amount owing under the terms of the Mortgage remains outstanding and unpaid.

(b) **Binding Effect.** All agreements, representations and warranties contained in this Consent and Agreement, the documents referred to herein and any document or certificate delivered pursuant hereto or thereto or in connection herewith or therewith or from time to time thereafter shall bind the party making the same and its successors and assigns and shall inure to the benefit of each party for whom made and their respective successors and assigns.

#### **SECTION 5. Notices.**

All communications and notices with respect to the transactions contemplated by this Consent and Agreement shall become effective when deposited in the United States Mail, with proper postage for first-class mail, prepaid, addressed (a) if to the Lender, to 399 Park Avenue, New York, New York 10043, Attention: Manager, Contracts Administration; and (b) if to Skiva, to 1350 Broadway, New York, New York 10018, Attention: Issac Chehebar; or at such other address as

any party hereto may from time to time designate by notice duly given in accordance with the provisions of this Section to the other party hereto.

#### **SECTION 6. Miscellaneous.**

(a) **Execution.** This Consent and Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, all of which, when so executed and delivered, shall constitute a single instrument, but the counterpart or counterpart set delivered to the Interstate Commerce Commission for recordation and subsequently redelivered to the Lender shall be deemed the original counterpart and all other counterparts hereof shall be deemed duplicate thereof. Although this Consent and Agreement is dated as of the date first above written for convenience, the actual dates of the execution hereof by the parties hereto are respectively the dates set forth under the signatures hereto.

(b) **Governing Law.** This Consent and Agreement shall be governed by, and be construed in accordance with, the laws of the State of New York, **provided, however,** that the parties shall be entitled to all rights conferred by 49 U.S.C. 11303, such additional rights arising out of the filing, recording, registering, or depositing hereof and any rights arising out of the marking on the Units of Equipment.

(c) **Amendments, Supplements, etc.** Neither this Consent and Agreement nor any of the terms hereof may be amended, supplemented, waived or modified (herein referred to as a **change**) orally, but only by an instrument in writing signed by the party against which enforcement of such change is sought.

(d) **Headings.** The headings of the sections and paragraphs of this Consent and Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions hereof.



IN WITNESS WHEREOF, the parties hereto have caused this Consent and Agreement to be duly executed by their respective officers thereunto duly authorized as of the date set forth above.

CITICORP INDUSTRIAL CREDIT,  
INC.

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Attest: \_\_\_\_\_

[Seal]

SKIVA INTERNATIONAL, INC.

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Attest: \_\_\_\_\_

[Seal]

State of New York           )  
                                  ss.:  
County of New York        )

On this \_\_\_\_\_ day of October, 1979, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of Citicorp Industrial Credit, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

State of New York           )  
                                  ss.:  
County of New York        )

On this \_\_\_\_\_ day of October, 1979, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of Skiva International Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

Exhibit F  
to Mortgage

---

AMENDMENT

Dated as of October 1, 1979

among

C & H RAILWAYS, LTD.,  
as Borrower

and

REX RAILWAYS, INC.,  
as Manager

---

(COVERING 100 GENERAL PURPOSE BOXCARS)

**AMENDMENT** dated as of October 1, 1979 among C & H RAILWAYS, LTD. (the **Borrower**) and REX RAILWAYS, INC. (the **Manager**) to Management Agreement dated as of February 13, 1979 between the Borrower and the Manager (the **Management Agreement**).

**W I T N E S S E T H :**

**WHEREAS**, Twitter, Inc. (the **Vendor**), the Manager and, through an Assignment dated March 15, 1979 (the **Assignment**) from Skiva International, Inc. (Skiva), the Borrower are parties to a Conditional Sale Agreement dated as of February 13, 1979 and amended by Amendment Agreement #1 dated as of February 13, 1979 (as so amended, the **Conditional Sale Agreement**), concerning the railroad equipment described in Annex A thereto (the **Equipment or Units**, and individually, a **Unit**);

**WHEREAS**, the Manager and, through the Assignment, the Borrower are parties to the Management Agreement pursuant to which the Manager has agreed to manage and maintain the Equipment;

**WHEREAS**, the Manager and the Lenawee County Railroad Company, Inc. (the **Lessee**) have entered into an Equipment Schedule executed on October 4, 1978 by the Manager and on October 9, 1978 by the Lessee, referring to the Equipment (the **Equipment Schedule**) which amends the Lease Agreement made as of September 23, 1977 (the **Lease Agreement**) between the Manager and the Lessee, which Lease Agreement provides that the Manager enter into the Equipment Schedule as principal or agent for parties to be named in an amendment to be delivered in accordance with the provisions of the Lease Agreement;

**WHEREAS**, the Manager and Skiva delivered to the Lessee a First Amendment to Equipment Schedule (the **First Amendment**) identifying Skiva as the principal for whom the Manager acts and who owns the Equipment, and, subsequent to the Assignment, the Manager, Skiva and the Borrower delivered to the Lessee a Second Amendment to Equipment Schedule (the **Second Amendment**) identifying the Borrower as the principal for whom the Manager acts and who owns the Equipment (the Lease Agreement, the Equipment Schedule, the First Amendment and the Second Amendment constituting the **Lease**);

**WHEREAS**, The Provident Bank (**Provident**), the Vendor, the Manager, the Borrower (through the Assignment), and Rex-Noreco, Inc. (**Rex-Noreco**) are parties to a Finance Agreement dated as of February 13, 1979 (the **Finance Agreement**) for the financing of the Equipment, pursuant to which Provident provided a portion of the purchase price of the Equipment;

**WHEREAS**, Provident has acquired substantially all of the right, title and interest of the Vendor in, to and under the

Conditional Sale Agreement pursuant to an Agreement and Assignment dated as of February 13, 1979 (the **Agreement and Assignment**);

**WHEREAS**, Provident has acquired, as security for the payment and performance of the obligations of the Borrower under the Conditional Sale Agreement and the Finance Agreement, all of the right, title and interest of the Borrower, as assignee of Skiva under the Assignment, in, to and under the Lease and the Management Agreement pursuant to a Lease Agreement Assignment dated as of February 13, 1979 (the **Lease Agreement Assignment**) and a Management Agreement Assignment dated as of February 13, 1979 (the **Management Agreement Assignment**), respectively;

**WHEREAS**, the Borrower desires to prepay, pursuant to the provisions of Article 4 of the Conditional Sale Agreement, the Conditional Sale Indebtedness, as defined in the Conditional Sale Agreement (the **Conditional Sale Indebtedness**), and all other amounts owing the Provident under the Conditional Sale Agreement;

**WHEREAS**, Citicorp Industrial Credit, Inc. (the **Lender**) and the Borrower have entered into a Mortgage dated as of October 1, 1979 (the **Mortgage**), and unless otherwise defined herein, all terms used herein shall have the meanings assigned to them in the Mortgage) pursuant to which the Lender will lend to the Borrower, subject to the terms and conditions thereof, the amount needed to prepay the Conditional Sale Indebtedness and the Borrower, as security for such loan and the other obligations of the Borrower under the Mortgage, will grant to the Lender a security interest in and assign to the Lender its rights in, to and under the Equipment, the Lease and the Management Agreement; and

**WHEREAS**, the parties hereto desire to amend certain provisions of the Management Agreement to facilitate the transactions contemplated by the Mortgage and conform the Management Agreement therewith and the Manager desires to consent to the Mortgage and the transactions contemplated thereby.

**NOW, THEREFORE**, in consideration of the premises hereof and of other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

**SECTION 1. Amendment to the Management Agreement.**

(a) The Management Agreement is hereby amended to the effect that all references therein to the "Conditional Sale Agreement" and the "Conditional Sales Agreement" shall hereafter refer to the Mortgage and the Note, including, without limitation, the reference in paragraph (a) of Section 7 of the Management Agreement to payments required to be made by the "Owner" under the "Conditional Sales Agreement", which shall refer to payments required to be made by the Borrower under the Mortgage and the Note, and the

*Handwritten:*  
Agreed  
to the  
Closing  
Date

reference in Section 10 of the Management Agreement to the Management Agreement and the Manager's authority and rights thereunder being subject to the Conditional Sale Agreement and the lien thereof, which shall refer to the Mortgage and the lien and security interest thereof.

(b) Except as expressly amended hereby, the Management Agreement is hereby ratified and affirmed and shall remain in full force and effect.

## **SECTION 2. Agreement of the Manager.**

The Manager agrees and covenants with the Borrower and the Lender that:

(a) **Consent to Mortgage.** The Manager hereby consents, notwithstanding any of the terms or provisions of the Lease and the Management Agreement, which may be to the contrary, to all of the terms and provisions of the Mortgage and to the transactions contemplated thereby, including, but not limited to, the prepayment by the Borrower of the Conditional Sale Indebtedness and the mortgage of and grant of a security interest to the Lender in the Collateral.

(b) **Entitlement to Benefits.** Subject to the reservations set forth in Section 4 of the Mortgage, the Lender, by virtue of the Mortgage, shall be entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by the Manager under the Management Agreement, as amended hereby, as though the Lender were named therein as the Owner.

(c) **No Liability.** The Lender shall not, by virtue of this Amendment, the Guaranty and Agreement, the Mortgage, including, without limitation, the assignment by the Borrower to the Lender of the Lease and the Management Agreement, as amended hereby, and all of the Borrower's rights, powers, privileges and remedies under the Lease and Management Agreement, as amended hereby, respectively, or otherwise, be or become subject to any liability or obligation under the Lease or the Management Agreement, as amended hereby.

(d) **Acknowledgment.** The Manager acknowledges that the Borrower is refinancing its monetary obligations under the Conditional Sale Agreement through the Mortgage and the Loan made thereunder.

(e) **No Modification.** The Lease and, except as expressly amended pursuant to this Amendment, the

Management Agreement shall not, without the prior written consent of the Lender, be terminated, modified or amended, nor shall any action be taken or omitted by the Manager, the taking or omission of which might result in an alteration or impairment of the Management Agreement or the Lease, or any of the rights created thereunder except upon the prior written consent of the Borrower and the Lender.

(f) **Payment to Lender.** The Manager will pay or cause to be paid all moneys resulting from the ownership, management, use, lease, or operation of the Equipment due and to become due under the Lease, the Management Agreement or otherwise in respect of the Units, directly to the Lender at its address set forth in Section 28 of the Mortgage (or at such other address as may be furnished in writing to the Manager by the Lender) without any deduction, set-off, reduction, abatement, counterclaim or recoupment for any reason whatsoever, for amounts due the Manager under the Management Agreement or otherwise or amounts due any other party. Any such moneys received by the Lender shall be applied as provided in such Section 28. The provisions of this subparagraph (4) shall not prevent the Manager from asserting any claim separately against the Borrower.

(g) **Subordination.** The rights of the parties to and under the Lease and the Management Agreement shall be subordinate to and junior in rank to the rights of the Lender under the Mortgage.

(h) **Monthly Utilization Reports.** Not later than 15 days after the end of each month, the Manager shall provide to the Lender and the Borrower a report showing, in reasonable detail, the car hire rate, car hire estimate, incentive rate, incentive estimate, mileage rate, mileage estimate, total estimate and percentage off line for each Unit of Equipment for such month, as well as the Units on and off line, as reported in the O.D.S.I. Railroad Operations Data System. Such monthly reports shall be provided to the Lender in addition to the reports specified in Section 13 of the Management Agreement.

(i) **Compliance.** So long as it retains the right to manage the Equipment pursuant to the Management Agreement, as amended hereby, and as it may be from time to time amended subject to the provisions hereof and of the Mortgage, pursuant to any subsequent agreement with the Borrower or otherwise, the Manager shall comply with and agrees to be bound by all of the terms and conditions of the Mortgage, as if it were a party thereto, which relate to the maintenance or use of the Equipment or the payment to the Lender of amounts received from the Lessee,

including, but not limited to, the terms and provisions of Sections 18, 19, and 28 thereof.

(j) **Office; Place of Business.** The Manager represents and warrants that the office where it keeps its records with respect to the Lease and its chief place of business is located in the State of New Jersey. The Manager shall not change the location of the office where it keeps such records or of its chief place of business without giving prior notice to the Lender of any such change and the new location of such office or chief place of business.

### **SECTION 3. Survival of Representations and Warranties; Binding Effect.**

(a) **Survival.** All agreements, representations and warranties contained in this Amendment, the documents referred to herein and any document or certificate delivered pursuant hereto or thereto or in connection herewith or therewith shall continue in effect following the execution and delivery of this Amendment and shall continue in effect so long as any amount owing under the terms hereof remains outstanding and unpaid.

(b) **Binding Effect.** All agreements, representations and warranties contained in this Amendment, the documents referred to herein and any document or certificate delivered pursuant hereto or thereto or in connection herewith or therewith or from time to time thereafter shall bind the party making the same and its successors and assigns and shall inure to the benefit of each party for whom made and their respective successors and assigns.

### **SECTION 4. Notices.**

All communications and notices with respect to the transactions contemplated by this Amendment shall be in writing and shall become effective when deposited in the United States mail, with proper postage for first-class mail, prepaid, addressed (a) if to the Borrower, to 1350 Broadway, New York, New York 10018, Attention: Isaac Chehebar, with a copy to the Manager at its notice address pursuant to the provisions of this Section; (b) if to the Manager, to 616 Palisade Avenue, Englewood Cliffs, New Jersey 07632; and (c) if to the Lender, to 399 Park Avenue, New York, New York 10043, Attention: Manager, Contracts Administration; or at such other address as any party hereto may from time to time designate by notice duly given in accordance with the provisions of this Section to the other parties hereto.



## SECTION 5. Miscellaneous.

(a) **Execution.** This Amendment may be executed in any number of counterparts and by the different parties hereto on separate counterparts, all of which, when so executed and delivered, shall constitute a single instrument, but the counterpart or counterpart set delivered to the Interstate Commerce Commission for recordation and subsequently redelivered to the Lender shall be deemed the original counterpart and all other counterparts hereof shall be deemed duplicates thereof. Although this Amendment is dated as of the date first above written for convenience, the actual dates of the execution hereof by the parties hereto are respectively the dates set forth under the signatures hereto.

(b) **Governing Law.** This Amendment shall be governed by, and be construed in accordance with, the laws of the State of New Jersey, **provided, however,** that the parties hereto and the Lender shall be entitled to all rights conferred by 49 U.S.C. §11303, such additional rights arising out of the filing, recording, registering or depositing hereof, and any rights arising out of the marking on the Units of Equipment.

(c) **Amendments, Supplements, etc.** Neither this Amendment nor any of the terms hereof may be amended, supplemented, waived or modified (herein referred to as a **change**) orally, but only by an instrument in writing signed by the party against which enforcement of such change is sought.

(d) **Headings.** The headings of the sections and paragraphs of this Amendment have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions hereof.

**IN WITNESS WHEREOF,** the parties hereto have caused this Amendment to be duly executed by their respective officers thereunto duly authorized as of the date set forth above.

C & H RAILWAYS, LTD.,  
as Borrower

By \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

[Seal]

REX RAILWAYS, INC.,  
as Manager

By \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

[Seal]

**CONSENT**

The undersigned, as Lender under the Mortgage, hereby consents to the terms and provisions of the above Amendment, including, but not limited to, the amendment of the Management Agreement effected thereby.

**CITICORP INDUSTRIAL CREDIT,  
INC.,  
as Lender**

By \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

[Seal]

State of New York            )  
                                  ss.:  
County of New York         )

On this \_\_\_\_\_ day of October, 1979, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of C&H Railways, Ltd., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

---

Notary Public

[Notarial Seal]

State of New Jersey        )  
                                  ss.:  
County of \_\_\_\_\_        )

On this \_\_\_\_\_ day of October, 1979, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of Rex-Railways, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

---

Notary Public

[Notarial Seal]

State of New York            )  
                                  ss.:  
County of New York         )

On this \_\_\_\_\_ day of October, 1979, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of Citicorp Industrial Credit, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

---

Notary Public

[Notarial Seal]

Exhibit G  
to Mortgage

---

INSTRUMENT OF TRANSFER

by

THE PROVIDENT BANK

---

(COVERING 100 GENERAL PURPOSE BOXCARS)

## INSTRUMENT OF TRANSFER

This **INSTRUMENT OF TRANSFER** by **THE PROVIDENT BANK**, an Ohio banking corporation (**Provident**).

### W I T N E S S E T H :

**WHEREAS**, Twitter, Inc. (the **Vendor**), Rex Railways, Inc. (the **Manager**) and, through an Assignment dated March 15, 1979 (the **Assignment**) from Skiva International, Inc. (**Skiva**), C&H Railways, Ltd. (the **Vendee**) are parties to a Conditional Sale Agreement dated as of February 13, 1979 and amended by Amendment Agreement #1 dated as of February 13, 1979 (as so amended, the **Conditional Sale Agreement**), concerning the railroad equipment described in Annex A thereto (the **Equipment or Units**, and individually, a **Unit**);

**WHEREAS**, the Manager and, through the Assignment, the Vendee are parties to a Management Agreement dated as of February 13, 1979 (the **Management Agreement**) pursuant to which the Manager has agreed to manage and maintain the Equipment;

**WHEREAS**, the Manager has entered into an Equipment Schedule (the **Equipment Schedule**) which amends the Lease Agreement made as of September 23, 1977 (the **Lease Agreement**) between the Manager and the Lenawee County Railroad Company, Inc. (the **Lessee**), which Lease Agreement provides that the Manager enter into the Equipment Schedule as principal or agent for parties to be named in an amendment to be delivered in accordance with the provisions of the Lease Agreement;

**WHEREAS**, the Manager and Skiva delivered to the Lessee a First Amendment to Equipment Schedule (the **First Amendment**) identifying Skiva as the principal for whom the Manager acts and who owns the Equipment, and, subsequent to the Assignment, the Manager, Skiva and the Vendee delivered to the Lessee a Second Amendment to Equipment Schedule (the **Second Amendment**) identifying the Vendee as the principal for whom the Manager acts and who owns the Equipment (the Lease Agreement, the Equipment Schedule, the First Amendment and the Second Amendment constituting the **Lease**);

**WHEREAS**, Provident, the Vendor, the Manager, the Vendee (through the Assignment), and Rex-Noreco, Inc. (**Rex-Noreco**) are parties to a Finance Agreement dated as of February 13, 1979 (the **Finance Agreement**) for the financing of the Equipment, pursuant to which Provident provided a portion of the purchase price of the Equipment;

**WHEREAS**, Provident and Rex-Noreco, Inc. are parties to a Guaranty and Agreement dated as of February 13, 1979 (the **Guaranty and Agreement**), pursuant to which Rex-Noreco, Inc. has guaranteed certain of the obligations of the Vendee under the Conditional Sale Agreement;

WHEREAS, Provident, as part of the arrangements for the financing of the Equipment, has acquired substantially all of the right, title and interest of the Vendor in, to and under the Conditional Sale Agreement pursuant to an Agreement and Assignment dated as of February 13, 1979 (the Agreement and Assignment);

WHEREAS, Provident has acquired, as security for the payment and performance of the obligations of the Vendee under the Conditional Sale Agreement and the Finance Agreement, all of the right, title and interest of the Vendee, as assignee of Skiva under the Assignment, in, to and under the Lease and the Management Agreement pursuant to a Lease Agreement Assignment dated as of February 13, 1979 (the Lease Agreement Assignment) and a Management Agreement Assignment dated as of February 13, 1979 (the Management Agreement Assignment), respectively; and

WHEREAS, the Vendee desires to prepay, pursuant to the provisions of Article 4 of the Conditional Sale Agreement, the Conditional Sale Indebtedness, as defined in the Conditional Sale Agreement (the Conditional Sale Indebtedness), and all other amounts owing to Provident under the Conditional Sale Agreement and the Finance Agreement, thereby terminating the Conditional Sale Agreement (together with the Promissory Note issued thereunder), the Finance Agreement, the Agreement and Assignment, the Lease Agreement Assignment and the Management Agreement Assignment pursuant to the provisions of each such agreement as well as the liability and obligations of the respective parties under the Guaranty and Agreement, and Provident desires to accept such payment and effect such termination.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, Provident agrees, represents and warrants as follows:

1. Provident hereby acknowledges that the Vendee has prepaid the Conditional Sale Indebtedness, pursuant to the provisions of Article 4 of the Conditional Sale Agreement, and all other amounts due and owing to Provident under the Conditional Sale Agreement and the Finance Agreement and that the Conditional Sale Agreement (together with the Promissory Note issued pursuant to the Finance Agreement), the Finance Agreement, the Guaranty and Agreement, the Agreement and Assignment, the Lease Agreement Assignment and the Management Agreement Assignment are each hereby terminated in accordance with the respective provisions thereof. The Conditional Sale Agreement (together with the Promissory Note issued pursuant to the Refinance Agreement), the Finance Agreement, the Agreement and Assignment, the Lease Agreement Assignment, the Management Agreement Assignment and the Guaranty and Agreement shall each be of no further force and effect and any party to any such agreement shall have no further liability to any other party thereto from and after the date hereof and Provident hereby releases the parties thereto from all of



their respective obligations and liabilities thereunder from and after the date hereof.

2. Provident hereby does grant, bargain, sell, transfer and set over unto the Vendee and its successors and assigns its Security Title, as defined in the Conditional Sale Agreement, and all other right, title and interest which it may have acquired under the Agreement and Assignment, the Conditional Sale Agreement, the Bill of Sale from the Vendor relating to the Equipment or otherwise, in and to the Equipment.

3. Provident hereby represents and warrants that the right, title and interest of Provident which is sold and transferred unto the Vendee and its successors and assigns pursuant to this Instrument of Transfer is free and clear of any claims, liens, security interests or other encumbrances resulting from any acts of Provident or arising by, through or under Provident.

4. Provident hereby agrees that at the request of the Vendee and at the Vendee's expense it will execute and deliver to the Vendee, for filing, recording, or depositing in all necessary public offices, such instrument or instruments in writing and acknowledged as may be necessary or appropriate in order to evidence in the public records the transfer unto the Vendee of Provident's interest in the Equipment, the release of its interest in the Conditional Sale Agreement and the termination of the Conditional Sale Agreement, the Agreement and Assignment, the Lease Agreement Assignment, the Management Agreement Assignment, the Finance Agreement and the Guaranty and Agreement, as provided in this Instrument of Transfer.

**IN WITNESS WHEREOF**, the undersigned has caused this Instrument of Transfer to be duly executed by its duly authorized officer and to become effective as of the date set forth below.

**THE PROVIDENT BANK**

By \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

State of Ohio                    )  
                                  ss.:  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of October, 1979, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of The Provident Bank, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]